



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 1

#### OVERVIEW

#### 1 Overview of Act

- (1) The following Parts contain provisions relating to international aspects of taxation—
  - (a) Parts 2 and 3 (double taxation relief),
  - (b) Parts 4 and 5 (transfer pricing and advance pricing agreements),
  - <sup>F1</sup>(c) .....
  - <sup>F2</sup>(ca) Part 6A (hybrid and other mismatches),]
  - <sup>F3</sup>(d) .....
  - (e) Part 8 (offshore funds [<sup>F4</sup>etc]),
  - <sup>F5</sup>(f) Part 9A (controlled foreign companies), and
  - (g) Part 10 (corporate interest restriction).]
- (2) Part 9 contains amendments of tax legislation to relocate enactments to appropriate places.
- (3) In particular, Part 9 contains amendments of TCGA 1992, ITTOIA 2005 and ITA 2007 that insert provisions relating to—
  - (a) oil activities (see section 364 and Schedule 1),
  - (b) alternative finance arrangements (see section 365 and Schedule 2),
  - (c) leasing arrangements involving finance leases or loans (see section 367 and Schedule 3),
  - (d) sale and lease-back etc (see section 368 and Schedule 4),
  - (e) factoring of income etc (see section 369 and Schedule 5), and
  - (f) UK representatives of non-UK residents (see section 370 and Schedule 6).

**Status:** Point in time view as at 12/02/2019.

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- (4) Part [F<sup>6</sup>11] contains provisions of general application (including definitions for the purposes of the Act).
- (5) For abbreviations used in this Act see section [F<sup>7</sup>500], and for defined expressions used in Parts 2 to 8 see Schedule 11.

#### Textual Amendments

- F1** S. 1(1)(c) omitted (with effect in accordance with Sch. 10 para. 22(b) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 10\(a\)](#)
- F2** S. 1(1)(ca) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 10\(b\)](#)
- F3** S. 1(1)(d) repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 11\(1\)\(a\)](#)
- F4** Word in s. 1(1)(e) inserted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\)](#), [s. 289\(5\)\(a\)\(6\)](#)
- F5** S. 1(1)(f)(g) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 13\(b\)](#)
- F6** Word in s. 1(4) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(4\)\(d\)\(i\)](#)
- F7** Word in s. 1(5) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(4\)\(d\)\(ii\)](#)

## PART 2

### DOUBLE TAXATION RELIEF

#### Modifications etc. (not altering text)

- C1** Pt. 2 modified by 1988 c. 1, Sch. 19ABA paras. 26-28 (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [s. 381\(1\)](#), [Sch. 8 para. 34\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C2** Pt. 2 applied by 2010 c. 4, s. 269DL(6) (as inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 3 para. 1](#))

## CHAPTER 1

### DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

#### *Double taxation arrangements*

## 2 Giving effect to arrangements made in relation to other territories

- (1) If Her Majesty by Order in Council declares—
- (a) that arrangements specified in the Order have been made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to taxes within subsection (3), and
  - (b) that it is expedient that those arrangements should have effect,
- those arrangements have effect.

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- [<sup>F8</sup>(1A) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.]
- (2) If arrangements have effect under subsection (1), they have effect in accordance with section 6.
- (3) The taxes are—
- (a) income tax,
  - (b) corporation tax,
  - (c) capital gains tax,
  - (d) petroleum revenue tax, and
  - (e) any taxes imposed by the law of the territory that are of a similar character to taxes within paragraphs (a) to (d).
- (4) In this Part “double taxation arrangements” means arrangements that have effect under subsection (1).

#### Textual Amendments

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

### 3 Arrangements may include retrospective or supplementary provision

- (1) Section 2(1) gives effect to arrangements even if the arrangements include—
- (a) provision for relief from tax for periods before the passing of this Act, or
  - (b) provision for relief from tax for periods before the making of the arrangements.
- (2) Section 2(1) gives effect to arrangements even if the arrangements include—
- (a) provision as to income that is not subject to double taxation,
  - (b) provision as to chargeable gains that are not subject to double taxation, <sup>F9</sup>...
  - (c) provision as to foreign-field consideration that is not subject to double taxation [<sup>F10</sup>or
  - (d) provision conferring (with or without other functions) functions relating to the determination of matters arising under the arrangements on a public authority in the United Kingdom or in a territory outside the United Kingdom.]
- (3) In subsection (2)(c) “foreign-field consideration” means consideration brought into charge to tax under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

#### Textual Amendments

- F9** Word in s. 3(2)(b) omitted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), s. 32(2)(a)(4)
- F10** S. 3(2)(d) and word inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), s. 32(2)(b)(4)

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#### **4 Meaning of “double taxation” in sections 2 and 3**

- (1) For the purposes of sections 2 and 3, any amount within subsection (2) is to be treated as having been payable.
- (2) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—
  - (a) given under the law of the territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and
  - (b) about which provision is made in double taxation arrangements.
- (3) References in sections 2 and 3 to double taxation are to be read in accordance with subsection (1).

#### **5 Orders under section 2: contents and procedure**

- (1) If an Order under section 2 (“the later Order”) revokes an earlier Order under that section, the later Order may contain transitional provisions that appear to Her Majesty to be necessary or expedient.
- (2) An Order under section 2 is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

#### **6 The effect given by section 2 to double taxation arrangements**

- (1) Subject to this Part and Part 18 of ICTA, double taxation arrangements have effect in accordance with subsections (2) to (4) despite anything in any enactment.
- (2) Double taxation arrangements have effect in relation to income tax and corporation tax so far as the arrangements provide—
  - (a) for relief from income tax or corporation tax,
  - (b) for taxing income of non-UK resident persons that arises from sources in the United Kingdom,
  - (c) for taxing chargeable gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,
  - (d) for determining the income or chargeable gains to be attributed to non-UK resident persons,
  - (e) for determining the income or chargeable gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, [<sup>F11</sup>or ]
  - (f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, <sup>F12</sup>...
  - <sup>F12</sup>(g) .....
- (3) Double taxation arrangements have effect in relation to capital gains tax so far as the arrangements provide—
  - (a) for relief from capital gains tax,
  - (b) for taxing capital gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,
  - (c) for determining the capital gains to be attributed to non-UK resident persons,

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- (d) for determining the capital gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, or
  - (e) for determining the capital gains to be attributed to UK resident persons who have special relationships with non-UK resident persons.
- (4) Double taxation arrangements have effect in relation to petroleum revenue tax so far as the arrangements provide for relief from petroleum revenue tax charged under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).
- (5) In the case of relief under this Chapter that is not also relief under Chapter 2, the relief is not available in respect of special withholding tax (a corresponding rule applies in relation to relief under Chapter 2 as a result of the definition of foreign tax given by section 21).
- (6) Relief under subsection (2)(a), (3)(a) or (4) requires a claim.
- (7) In subsection (3) “UK resident person” and “non-UK resident person” have the meaning given by section 989 of ITA 2007.
- (8) In subsection (5) “special withholding tax” has the same meaning as in Part 3 (see section 136).

#### Textual Amendments

- F11** Word in s. 6(2) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 68\(2\)\(a\)](#)
- F12** S. 6(2)(g) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 68\(2\)\(b\)](#)

#### Modifications etc. (not altering text)

- C3** [S. 6\(1\)](#) excluded by 2005 c. 5, s. 608W(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 3 para. 4](#))
- C4** [S. 6\(1\)](#) excluded by 1992 c. 12, Sch. 1A para. 11 (as inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 1 para. 14](#))

## 7 General regulations

- (1) The Commissioners for Her Majesty's Revenue and Customs may make regulations generally for carrying out the provisions of the treaty sections or any double taxation arrangements.
- (2) Regulations under subsection (1) may in particular provide for securing that relief from taxation imposed by the law of the territory to which any double taxation arrangements relate does not enure for the benefit of persons not entitled to that relief.
- (3) Subsection (4) applies to tax if—
- (a) the tax is deductible from a payment but, in order to comply with double taxation arrangements, has not been deducted, and
  - (b) it is discovered that the arrangements did not apply to that payment.
- (4) Regulations under subsection (1) may in particular provide for authorising recovery of tax to which this subsection applies—

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- (a) by assessment on the person entitled to the payment from which the tax is not deducted, or
  - (b) by deduction from subsequent payments.
- (5) In subsection (1) “the treaty sections” means—
- sections 2 to 6,
  - section 134(1), and
  - section 134(3) to (6) so far as relating to section 134(1).
- (6) This section does not apply in relation to—
- (a) petroleum revenue tax, or
  - (b) taxes imposed by the law of a territory outside the United Kingdom that—
    - (i) are of a similar character to petroleum revenue tax, and
    - (ii) are not of a similar character to income tax, corporation tax or capital gains tax.

#### *Unilateral relief arrangements*

### **8 Interpretation: “unilateral relief arrangements” means rules 1 to 9, etc**

- (1) In this Part “unilateral relief arrangements”, in relation to a territory outside the United Kingdom, means the rules set out in sections 9 to 17.
- (2) In sections 11 to 17, and in Chapter 2 (except section 29) in its application to relief under unilateral relief arrangements, references to tax payable or paid under the law of a territory outside the United Kingdom include only—
- (a) taxes which are charged on income and which correspond to income tax,
  - (b) taxes which are charged on income or chargeable gains and which correspond to corporation tax, and
  - (c) taxes which are charged on capital gains and which correspond to capital gains tax.
- (3) For the purposes of subsection (2), tax may correspond to income tax, corporation tax or capital gains tax even though it—
- (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

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

- (1) Credit for tax—
- (a) paid under the law of the territory,
  - (b) calculated by reference to income arising, or any chargeable gain accruing, in the territory, and
  - (c) corresponding to UK tax,
- is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.
- (2) Credit for tax—
- (a) paid under the law of the territory,
  - (b) calculated by reference to any capital gain accruing in the territory, and

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- (c) corresponding to UK tax,  
is to be allowed against any capital gains tax calculated by reference to that gain.
- (3) For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.
- (4) For the purposes of subsection (1)(c), tax corresponds to UK tax if—
- (a) it is charged on income and corresponds to income tax, or
  - (b) it is charged on income or chargeable gains and corresponds to corporation tax.
- (5) For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.
- (6) For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—
- (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.
- (7) If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of “in the territory”.
- (8) Subsections (1) and (2) are subject to sections 11 and 12.

## 10 Rule 2: accrued income profits

- (1) Subsection (2) applies if—
- (a) a person is treated under section 628(5) of ITA 2007 as making accrued income profits in an interest period,
  - (b) the person would, were the person to become entitled in the relevant tax year to any interest on the securities concerned, be liable in respect of the interest to tax chargeable under ITTOIA 2005 on relevant foreign income, and
  - (c) the person is liable under the law of the territory to tax in respect of interest payable on the securities at the end of the interest period or the person would be so liable if the person were entitled to that interest.
- (2) Credit is to be allowed against income tax calculated by reference to the accrued income profits.
- (3) The amount of the credit allowed under subsection (2) is given by—

$$\text{AIP} \times \text{FTR}$$

where—

AIP is the amount of the accrued income profits, and

FTR is the rate of tax to which the person is or would be liable as mentioned in subsection (1)(c).

- (4) Subsection (2) is subject to section 11.
- (5) In subsection (1)(b) “the relevant tax year” means the tax year in which, under section 617(2) of ITA 2007, the accrued income profits are treated as made.

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

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

- (1) Credit for tax paid under the law of the territory is not allowed under section 9 or 10 in the case of any income or gains if any credit for that tax is allowable in respect of that income or those gains under double taxation arrangements made in relation to the territory.
- (2) If credit in respect of an amount of tax may be allowed under double taxation arrangements made in relation to the territory, credit is not allowed under section 9 or 10 in respect of that tax.
- (3) If double taxation arrangements made in relation to the territory contain express provision to the effect that relief by way of credit is not to be given under the arrangements in cases or circumstances specified or described in the arrangements, credit is not allowed under section 9 or 10 in those cases or circumstances.

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

- (1) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed only if section 13, 14, 15 or 16 so provides.
- (2) If credit is allowed in principle as a result of at least one of sections 14, 15 and 16, any tax in respect of P’s profits that is paid by P under the law of the territory is to be taken into account in considering whether any, and (if so) what, credit is in fact to be allowed under section 9 in respect of the dividend.
- (3) If credit is allowed in principle as a result of at least one of sections 15 and 16, there is to be taken into account, as if it were tax payable under the law of the territory, any tax that would be so taken into account under section 63(5) if the recipient of the dividend—
  - (a) directly or indirectly controlled, or
  - (b) were a subsidiary of a company that directly or indirectly controlled, at least 10% of the voting power in P.
- (4) For the purposes of subsection (3), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

## **13 Rule 5: credit for tax charged directly on dividend**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if—
  - (a) the overseas tax is charged directly on the dividend (whether by charge to tax, deduction of tax at source or otherwise), and
  - (b) neither P nor the recipient of the dividend would have borne any of that tax if the dividend had not been paid.



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

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if conditions A and B are met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, at least 10% of the voting power in P.
- (5) For the purposes of subsection (4), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

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

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if each of conditions A to C is met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, less than 10% of the voting power in P.
- (5) If condition B is met, in subsection (6) “the held percentage” means the voting power in P which is directly or indirectly controlled by—
  - (a) the recipient, or
  - (b) a company of which the recipient is a subsidiary.
- (6) Condition C is that—
  - (a) the held percentage has been reduced below 10%,
  - (b) the recipient shows that the reduction below the 10% limit (and any further reduction)—
    - (i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

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- (ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and
  - (c) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.
- (7) For the purposes of subsection (6) a company is an “associate” if—
- (a) the company is neither the recipient nor a parent,
  - (b) before the reduction, the voting power in P that is in question was controlled otherwise than directly by the recipient, and
  - (c) the company is relevant for determining whether, before the reduction, the recipient—
    - (i) indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in P.
- (8) In subsections (6) and (7) “parent” means a company of which the recipient is a subsidiary.
- (9) In subsection (6) “the relevant voting power” means—
- (a) the voting power in P as a result of which relief was due under section 14 before the reduction, or
  - (b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

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

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if each of conditions A to C is met.
- (3) Condition A is that—
- (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
- (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, less than 10% of the voting power in P.
- (5) If condition B is met, in subsection (6) “the held percentage” means the voting power in P which is directly or indirectly controlled by—
- (a) the recipient, or
  - (b) a company of which the recipient is a subsidiary.

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- (6) Condition C is that—
- (a) the held percentage has been acquired in exchange for voting power in another company (“X”),
  - (b) before the exchange, the recipient—
    - (i) directly or indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in X,
  - (c) the recipient shows that the exchange (and any reduction after the exchange) —
    - (i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and
    - (ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and
  - (d) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.
- (7) For the purposes of subsection (6) a company is an “associate” if—
- (a) the company is neither the recipient nor a parent,
  - (b) before the exchange, the voting power in X that is in question was controlled otherwise than directly by the recipient, and
  - (c) the company is relevant for determining whether, before the exchange, the recipient—
    - (i) indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in X.
- (8) In subsections (6) and (7) “parent” means a company of which the recipient is a subsidiary.
- (9) In subsection (6) “the relevant voting power” means—
- (a) the voting power in X as a result of which relief was due under section 14 before the exchange, or
  - (b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

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

- (1) Subsection (2) applies if—
- (a) under the law of the territory, an amount of tax (“the spared tax”) would, but for a relief, have been payable by a company resident in the territory (“company A”) in respect of any of its profits,
  - (b) company A pays a dividend out of those profits to another company resident in the territory (“company B”),

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- (c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom (“company C”), and
  - (d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, as a result of the operation of section 20(2) in relation to double taxation arrangements made in relation to the territory, to treat the spared tax for the purposes of Chapter 2 as having been payable.
- (2) The spared tax is to be taken into account—
- (a) for the purposes of sections 9 to 16, and
  - (b) subject to section 31(4), for the purposes of Chapter 2 in its application to relief under these rules in relation to the dividend paid to company C, as if it had been payable and paid.
- (3) References in these rules and that Chapter—
- (a) to tax payable or chargeable, or
  - (b) to tax not chargeable directly or by deduction,
- are to be read in accordance with subsection (2).
- (4) Except as provided by subsection (2), in relation to any dividend paid—
- (a) by a company resident in the territory,
  - (b) to a company resident in the United Kingdom,
- credit as a result of these rules is not to be given under section 63(5) in respect of tax which would have been payable under the law of the territory, or under the law of any other territory outside the United Kingdom, but for a relief.
- (5) Subsection (4) has effect despite any double taxation arrangements—
- (a) made in relation to the territory, or
  - (b) made in relation to any other territory outside the United Kingdom,
- which make provision about a relief given, under the law of the territory in relation to which the arrangements are made, with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom.
- (6) In this section “these rules” means sections 9 to 16 and this section.

## CHAPTER 2

### DOUBLE TAXATION RELIEF BY WAY OF CREDIT

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

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

- (1) Subsection (2) applies if—
- (a) under double taxation arrangements, or
  - (b) under unilateral relief arrangements for a territory outside the United Kingdom,
- credit is to be allowed against any income tax, corporation tax or capital gains tax chargeable in respect of any income or chargeable gain.

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- (2) The amount of those taxes chargeable in respect of the income or gain is to be reduced by the amount of the credit.
- (3) In subsection (1) “credit”—
  - (a) in relation to double taxation arrangements, means credit for tax payable under the law of the territory in relation to which the arrangements are made, and
  - (b) in relation to unilateral relief arrangements for a territory outside the United Kingdom, means credit for tax payable under the law of that territory,but see sections 12(3) and 63(5) (dividends: certain tax payable otherwise than under the law of a territory treated as payable under that law).
- [<sup>F13</sup>(3A) References in subsection (3) to tax payable under the law of a territory outside the United Kingdom do not include tax paid by a company in relation to which an election under section 18A of CTA 2009 (exemption for profits or losses of overseas permanent establishments) has effect in respect of a relevant profits amount or relevant losses amount within the meaning of that section.]
- (4) Subsection (2) applies subject to—
  - (a) the following provisions of this Chapter,
  - (b) section 106 (Chapter 1 and this Chapter operate for capital gains tax purposes separately from their operation for the purposes of other United Kingdom taxes), and
  - (c) Chapter 2 of Part 18 of ICTA (double taxation relief: pooling of foreign dividends paid before 1 July 2009).
- (5) Credit is allowed under subsection (2) against any tax only if, under the arrangements concerned, credit is allowable against that tax.
- (6) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.

#### Textual Amendments

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

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

- (1) Subsections (2) and (3) apply to a claim for relief under section 18(2).
- (2) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to income tax or capital gains tax for a tax year, the claim must be made on or before—
  - (a) the fourth anniversary of the end of that tax year, or
  - (b) if later, the 31 January following the tax year in which the foreign tax is paid.
- (3) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to corporation tax for an accounting period, the claim must be made not more than—
  - (a) four years after the end of that accounting period, or
  - (b) if later, one year after the end of the accounting period in which the foreign tax is paid.

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## **20 Foreign tax includes tax spared because of international development relief**

- (1) Subsections (2) and (4) apply if the arrangements are double taxation arrangements.
- (2) For the purposes of this Chapter, any amount within subsection (3) is to be treated as having been payable.
- (3) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—
  - (a) given under the law of that territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and
  - (b) about which provision is made in double taxation arrangements.
- (4) References in this Chapter—
  - (a) to tax payable or chargeable, or
  - (b) to tax not chargeable directly or by deduction,
 are to be read in accordance with subsection (2).
- (5) Subsections (2) and (4) have effect subject to—
  - (a) subsection (6), and
  - (b) sections 31(4) and 32(5) (income and gains not to be increased in calculations under section 31 or 32 by amounts treated by this section as having been payable).
- (6) If section 63(5) applies because conditions A and B in section 63 are met, relief is not given in accordance with section 63(5) (relief for certain tax underlying dividends paid between related companies) because of this section unless double taxation arrangements make express provision for the relief.
- (7) Subsection (6) does not affect the operation of section 17(2) (treatment, for purposes of unilateral relief, of dividend paid by foreign company that has received dividends from a company benefiting from tax-sparing relief).

### *Interpretation of Chapter*

## **21 Meaning of “the arrangements”, “the non-UK territory”, “foreign tax” etc**

- (1) In this Chapter (except section 18)—
  - “the arrangements” means the arrangements mentioned in section 18(1),
  - “the non-UK territory” means the territory mentioned in section 18(3),
  - “foreign tax” means tax chargeable under the law of the non-UK territory—
    - (a) for which credit may be allowed under the arrangements, and
    - (b) which is not special withholding tax, and
  - “underlying tax” means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction.
- (2) In subsection (1) “special withholding tax” has the same meaning as in Part 3 (see section 136).
- (3) The definitions in subsection (1) are to be read with sections 17(3) and 20(4) (meaning of references to tax payable or chargeable, and of references to tax not chargeable directly or by deduction).

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

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

## **22 Credit for foreign tax on overlap profit if credit for that tax already allowed**

- (1) Subsection (2) applies in relation to foreign tax (“FT”) paid in respect of any income if—
- (a) the income is overlap profit, and
  - (b) credit for FT would have been allowed under section 18(2) against income tax chargeable for a tax year (“year L”) in respect of the income but for the fact that credit for FT had been allowed against income tax chargeable in respect of the income for a previous tax year.
- (2) Credit for FT is allowed against income tax chargeable for year L in respect of the income.
- (3) The amount of credit allowed for year L under subsection (2) in respect of the income must not exceed the difference between—
- (a) T, and
  - (b) the amount of credit which was in fact allowed, under subsection (2) or section 18(2), in respect of the income for any earlier tax year or years.
- (4) For the purposes of subsection (3)(a), T is the amount (“A”) of the foreign tax charged on the income, but this is subject to subsections (5) to (7).
- (5) If Y exceeds FP—

$$T = \frac{Y}{FP} \times A$$

where—

Y is the number of tax years for which credit is allowed, under subsection (2) or section 18(2), against income tax in respect of the income, and  
FP is the number of foreign periods of assessment.

- (6) For the purposes of subsection (5), a tax year or foreign period of assessment for which part only of the income is charged to tax is counted not as one year or period but as a fraction of a year or period, the fraction being—

$$\frac{P}{W}$$

where—

P is that part of the income, and  
W is the whole of the income.

- (7) If the same income is charged to different foreign taxes for different foreign periods of assessment—
- (a) subsection (5) (read with subsection (6)) is to be applied separately to each of those taxes, and

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- (b) T is the sum of those taxes after subsection (5) has been applied to them in accordance with paragraph (a).

- (8) In this section—

“overlap profit” has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see [F14 sections 204 and 204A] of that Act), and

“foreign period of assessment”, in relation to any income, means a period for which the income is, under the law of the non-UK territory, charged to the foreign tax concerned.

#### Textual Amendments

- F14** Words in s. 22(8) substituted (with effect in accordance with Sch. 3 para. 13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 3 para. 12\(a\)](#)

### 23 Time limits for claims for relief under section 22(2)

- (1) Relief under section 22(2) requires a claim.
- (2) Any claim for relief by way of credit under section 22(2) against income tax for any tax year must be made on or before the fifth anniversary of the 31 January following that tax year, subject to subsection (3).
- (3) If there is more than one tax year in respect of which such relief may be given, any claim for the relief must be made on or before the fifth anniversary of the 31 January following the later of those tax years.

### 24 Claw-back of relief under section 22(2)

- (1) Subsections (4) and (5) apply if—
- credit against income tax for any tax year is allowed under section 22(2) in respect of any income (“the original income”), and
  - the original income, or any part of it, contributes to an amount which, under section 205 or 220 of ITTOIA 2005, is deducted in calculating profits of a later tax year (“the later year”).
- (2) For the purposes of subsections (4) and (5), amount A is the difference between—
- the amount of the credit which, as a result of the application of sections 18(2) and 22(2) and subsection (5) of this section, has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (1), and
  - the amount of the credit which, ignoring sections 22 and 23 and this section, would have been allowed under section 18(2) against income tax in respect of so much of the original income as contributes as mentioned in subsection (1).
- (3) For the purposes of subsections (4) and (5), amount B is the amount of credit which, on the assumption that no amount were deducted under section 205 or 220 of ITTOIA 2005, would be allowable under section 18(2) against income tax in respect of income arising in the later year from the same source as the original income.
- (4) If amount A exceeds amount B—
- no credit is allowed for income arising from that source in the later year,



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- (b) an amount of income tax equal to the excess is charged for the later year, and
  - (c) the liable person is liable for the tax.
- (5) If amount B exceeds amount A, the liable person is allowed for the later year an amount of credit equal to the excess.
- (6) In subsections (4) and (5) “the liable person” means the person liable for income tax charged on the income (if any) arising in the later year from the same source as the original income.
- (7) For the purposes of subsections (1) to (6), it is to be assumed that, where an amount is deducted under section 220 of ITTOIA 2005, each of the overlap profits added together at Step 1 of the calculation in subsection (3) of that section contributes to that amount in the proportion which that overlap profit bears to the total that is the result of that Step.
- (8) In this section—
- (a) “overlap profit” has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see [F15sections 204 and 204A] of that Act), and
  - (b) references to income arising in any year include income received in the year that is income on which income tax is to be calculated by reference to the amount of income received in the United Kingdom.

#### Textual Amendments

- F15** Words in s. 24(8) substituted (with effect in accordance with Sch. 3 para. 13 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 3 para. 12(b)**

#### *Cases in which credit not allowed*

### **25 Credit not allowed if relief allowed against overseas tax**

- (1) Subsection (2) applies if relief may be allowed—
- (a) under the arrangements, or
  - (b) under the law of the non-UK territory in consequence of the arrangements, in respect of an amount of tax that would, but for the relief, be payable under the law of that territory.
- (2) Credit under section 18(2) is not allowed in respect of that tax, whether or not the relief has been used.

### **26 Credit not allowed under arrangements unless taxpayer is UK resident**

- (1) Credit under section 18(2) against income tax, corporation tax or capital gains tax for a chargeable period is not allowed unless the person in respect of whose income or chargeable gains the tax is chargeable is UK resident for that period.
- (2) Sections 28 to 30 (credit under unilateral relief arrangements allowed to some non-UK resident persons) contain exceptions to subsection (1).
- (3) In subsection (1) so far as it relates to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).

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

## **27 Credit not allowed if person elects against credit**

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

*Exceptions to requirement to be UK resident*

## **28 Unilateral relief for Isle of Man or Channel Islands tax**

- (1) Subsection (2) applies if the arrangements—
- (a) are unilateral relief arrangements for a territory outside the United Kingdom, and
  - (b) provide for credit to be allowed for tax paid under the law of the Isle of Man (“the Isle of Man tax”).
- (2) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Isle of Man tax if the person in respect of whose income or chargeable gains the UK tax is payable is—
- (a) resident for that period in the United Kingdom, or
  - (b) resident for that period in the Isle of Man.
- (3) Subsection (4) applies if the arrangements—
- (a) are unilateral relief arrangements for a territory outside the United Kingdom, and
  - (b) provide for credit to be allowed for tax paid under the law of any of the Channel Islands (“the Channel Islands tax”).
- (4) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Channel Islands tax if the person in respect of whose income or chargeable gains the UK tax is payable is—
- (a) resident for that period in the United Kingdom, or
  - (b) resident for that period in any of the Channel Islands.
- (5) Each of the following is a UK tax for the purposes of this section—
- (a) income tax,
  - (b) corporation tax, and
  - (c) capital gains tax.
- (6) In subsections (2) and (4) so far as they relate to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).

## **29 Unilateral relief for tax on income from employment or office**

- (1) Subsection (3) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.
- (2) In subsection (3) “overseas tax” means tax—

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- (a) paid under the law of the territory,
  - (b) charged on income and corresponding to income tax or to corporation tax, and
  - (c) calculated by reference to income from an office or employment the duties of which are performed wholly or mainly in the territory.
- (3) Credit for overseas tax may be allowed under section 18(2) against income tax for a tax year—
- (a) calculated by reference to that income, and
  - (b) charged on employment income,
- if the person performing the duties is resident in the United Kingdom, or resident in the territory, for that year.
- (4) For the purposes of subsection (2)(b) tax may correspond to income tax or corporation tax even though it—
- (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

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

- (1) Subsection (2) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.
- (2) Credit for tax within subsection (3) or (4) may be allowed under section 18(2) against any of the UK taxes if the territory is not one in which the person or company concerned is liable to tax by reason of domicile, residence or place of management.
- (3) Tax is within this subsection if the arrangements provide for credit for it to be allowed against income tax or corporation tax, and it is paid under the law of the territory in respect of the income or chargeable gains—
- (a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or
  - (b) of a permanent establishment in the United Kingdom of a non-UK resident company.
- (4) Tax is within this subsection if the arrangements provide for credit for it to be allowed against capital gains tax, and it is paid under the law of the territory in respect of the capital gains—
- (a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or
  - (b) of a permanent establishment in the United Kingdom of a non-UK resident company.
- (5) Relief under subsection (2) may not exceed the relief which would have been available if—
- (a) the branch or agency, or permanent establishment, had been a UK resident person, and
  - (b) the income or gains had been income or gains of that person.
- (6) Each of the following is a UK tax for the purposes of subsection (2)—
- (a) income tax,
  - (b) corporation tax, and
  - (c) capital gains tax.

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- (7) In this section so far as it relates to capital gains tax—
- “branch or agency” has the meaning given by section 10(6) of TCGA 1992,
  - “company” has the same meaning as in TCGA 1992 (see section 288 of that Act),
  - “permanent establishment”, in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010, and
  - “UK resident” or “non-UK resident”, in relation to a company or other person, has the meaning given by section 989 of ITA 2007.

*Calculating income or gains in respect of which credit is allowed*

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

- (1) Subsection (2) applies if—
- (a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or gain, and
  - (b) section 32(2) (cases where UK tax payable by reference to amount received in UK) does not apply.
- (2) In calculating the amount of the income or gain for the purposes of income tax, corporation tax or capital gains tax—
- (a) no deduction is to be made for foreign tax or special withholding tax, whether in respect of the same or any other income or gain, and
  - (b) if the credit is for foreign tax in respect of a dividend, the amount of the dividend is to be treated as increased by any underlying tax within subsection (3).
- (3) In relation to a dividend, underlying tax is within this subsection if—
- (a) under the arrangements it is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend,
  - (b) because the amount given by Step 2 of the calculation under section 58 is more than the amount given by Step 3 of that calculation, it is not to be taken into account in considering the questions mentioned in paragraph (a), or
  - (c) under section 60(3) it is not to be taken into account in considering those questions.
- (4) The amount of any income or gain is not to be increased under subsection (2)(b) by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.
- (5) Subsections (1) to (4) have effect for the purposes of corporation tax despite—
- (a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and
  - (b) section 906(1) of CTA 2009 (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).
- (6) In this section “special withholding tax” means special withholding tax—
- (a) within the meaning of Part 3 (see section 136), and
  - (b) in respect of which a claim has been made under that Part.

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

- (1) Subsection (2) applies if—
- (a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or capital gain, and
  - (b) income tax or capital gains tax is payable by reference to the amount received in the United Kingdom.
- (2) For the purposes of whichever of income tax and capital gains tax is payable as mentioned in subsection (1)(b), the amount received is to be treated as increased—
- (a) by the amount of the foreign tax in respect of the income or gain,
  - (b) by the amount of any special withholding tax levied in respect of the income or gain, but see subsection (4), and
  - (c) if the credit is for foreign tax in respect of a dividend, by any underlying tax that under the arrangements is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend.
- (3) For the purposes of subsection (4), a gain is a “special gain” if—
- (a) it is a chargeable gain that accrues to a person on a disposal by the person of assets,
  - (b) the consideration for the disposal consists of or includes an amount of savings income, and
  - (c) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.
- (4) If the credit is for foreign tax in respect of a gain that is a special gain, the amount of the increase under subsection (2)(b) is given by—

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

where—

AWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal concerned,

GUK is the amount of the gain received in the United Kingdom, and

SG is the amount of the gain.

- (5) The amount of any income or gain is not to be increased under this section by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.
- (6) In this section—
- “savings income” has the same meaning as in Part 3 (see section 136), and
  - “special withholding tax” means special withholding tax—
    - (a) within the meaning of Part 3 (see section 136), and
    - (b) in respect of which a claim has been made under that Part.

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### *Limits on credit: general rules*

#### **33 Limit on credit: minimisation of the foreign tax**

- (1) The credit under section 18(2) must not exceed the credit which would be allowed had all reasonable steps been taken—
  - (a) under the law of the non-UK territory, and
  - (b) under double taxation arrangements made in relation to that territory, to minimise the amount of tax payable in that territory.
- (2) The steps mentioned in subsection (1) include—
  - (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
  - (b) making elections for tax purposes.
- (3) For the purposes of subsection (1), any question as to the steps which it would have been reasonable for a person to take is to be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part.

#### **34 Reduction in credit: payment by reference to foreign tax**

- (1) Subsection (2) applies if—
  - (a) credit for foreign tax is to be allowed to a person (“P”) under the arrangements, and
  - <sup>F16</sup>(b) a tax authority makes a payment by reference to that tax, and that payment—
    - (i) is made to P or a person connected with P, or
    - (ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into.]
- (2) The amount of that credit is to be reduced by an amount equal to that payment.
- (3) Whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.
- <sup>F17</sup>(4) In subsection (1)(b)(ii) “scheme” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.]

#### **Textual Amendments**

**F16** S. 34(1)(b) substituted (with effect in accordance with s. 292(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 292\(2\)](#)

**F17** S. 34(4) inserted (with effect in accordance with s. 292(8) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 292\(3\)](#)

#### **35 Disallowed credit: use as a deduction**

- (1) Subsection (2) applies if the application of section 36(2) or 42(2) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.
- (2) The taxpayer's income is to be treated as reduced by the amount of the disallowed credit.

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- (3) Subsection (4) applies if the application of section 40(2) prevents an amount of credit for foreign tax from being allowable against capital gains tax.
- (4) The taxpayer's chargeable gains are to be treated as reduced by the amount of the disallowed credit.
- (5) Subsection (2) or (4) applies only so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.
- (6) For the purposes of subsection (5), payment of the foreign tax is to be taken into account despite section 31(2).

*Limit on, and reduction of, credit against income tax*

### 36 Amount of limit

- (1) This section is about the amount of credit allowed under section 18(2) against a person's income tax for any tax year.
- (2) The amount of credit in respect of income from any particular source must not exceed the difference between—
  - (a) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - X$$

and

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

$$TI - (X + C)$$

- (3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of income from more than one source, apply subsection (2) successively to the income from each source, taking the sources in the order which will result in the greatest reduction in the person's income tax liability for the tax year.
- (4) In subsection (2)—
  - TI is the person's total income for the tax year,
  - X is the income (if any) to which subsection (2) has already been applied, and
  - C is the income in respect of which the credit is to be allowed.
- (5) The rules for calculating an amount of income tax under subsection (2) are—
  - (a) the calculation is to be made in accordance with sections 31 and 32, and
  - (b) no credit is to be allowed for foreign tax, and
  - (c) no reduction is to be made under section 26 of FA 2005 (trusts for the benefit of a vulnerable beneficiary), but
  - (d) any other income tax reduction under the Income Tax Acts is to be made.

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- (6) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.
- (7) For the purposes of subsection (3) the following are “tax-relief arrangements”—
  - (a) double taxation arrangements, and
  - (b) unilateral relief arrangements for a territory outside the United Kingdom.

### **37 Credit against tax on trade income: further rules**

- (1) Apply section 36(2) in accordance with subsections (2) to (5) if the tax against which the credit is to be allowed is income tax on trade income.
- (2) Treat the reference to income from any particular source as a reference to trade income arising out of a transaction, arrangement or asset.
- (3) C is the income arising out of the transaction, arrangement or asset in connection with which the credit arises.
- (4) In calculating an amount of income tax under section 36(2) deduct, from the income arising out of the transaction, arrangement or asset in connection with which the credit arises, deductions which would be allowed in a calculation of the taxpayer's liability in respect of that income.
- (5) Treat section 36(3) as referring—
  - (a) to trade income instead of income, and
  - (b) to a transaction, arrangement or asset instead of a source.
- (6) In subsection (4) “deductions” includes a just and reasonable apportionment of deductions that relate—
  - (a) partly to the income arising out of the transaction, arrangement or asset in connection with which the credit arises, and
  - (b) partly to other matters.
- (7) In this section “trade income” means income chargeable to tax under—
  - (a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts), or
  - (b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts).

### **38 Credit against tax on royalties: further rules**

- (1) Subsection (2) applies if—
  - (a) the arrangements are double taxation arrangements, and
  - (b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.
- (2) For the purposes of section 36(2)—
  - (a) royalty income arising in more than one foreign jurisdiction in a tax year in respect of the asset is to be treated as a single item of income, and
  - (b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.



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

### 39 Credit reduced by reference to accrued income losses

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person is entitled under section 18(2) to credit against income tax.
- (3) Condition B is that the income tax is calculated by reference to income consisting of interest in respect of which the person is entitled under section 679 of ITA 2007 (no income tax on interest so far as matched by accrued income losses) to an exemption from liability to income tax.
- (4) Condition C is that—
  - (a) the arrangements are unilateral relief arrangements for a territory outside the United Kingdom and the credit is allowed as a result of section 9, or
  - (b) the arrangements are double taxation arrangements and the credit is allowed as a result of the inclusion in the arrangements of any provision corresponding to that section.
- (5) The amount of the credit is to be reduced to the amount given by—

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

where—

I is the amount of the interest,

E is the amount of the exemption, and

C is the amount the credit would be apart from this subsection.

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

*Limit on credit against capital gains tax*

### 40 Amount of limit

- (1) This section is about the amount of credit allowed under section 18(2) against a person's capital gains tax for any tax year.
- (2) The amount of credit in respect of any particular capital gain must not exceed the difference between—
  - (a) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - X$$

and

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

$$TG - (X + C)$$

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- (3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of more than one capital gain, apply subsection (2) successively to each capital gain, taking the gains in the order which will result in the greatest reduction in the person's capital gains tax liability for the tax year.
- (4) In subsection (2)—
- TG is the total amount of the chargeable gains accruing to the person in the tax year,
  - X is the total amount of the gains (if any) to which subsection (2) has already been applied, and
  - C is the amount of the gain in respect of which the credit is to be allowed.
- (5) The rules for calculating an amount of capital gains tax under subsection (2) are—
- (a) the calculation is to be made in accordance with sections 31 and 32, and
  - (b) no credit is to be allowed for foreign tax.
- (6) For the purposes of subsection (3) the following are “tax-relief arrangements”—
- (a) double taxation arrangements, and
  - (b) unilateral relief arrangements for a territory outside the United Kingdom.

*Limit on total credit against income tax and capital gains tax*

**41 Amount of limit**

- (1) In subsection (2) “the total credit” means—

$$F + G$$

where—

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

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

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

$$I + C - A$$

where—

I is the total income tax payable by the person for the tax year,

C is the total capital gains tax payable by the person for the tax year, and

A is the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by the person in the tax year.

- (3) In calculating I and C for the purposes of subsection (2), no reduction is to be made for credit under section 18(2).
- (4) Subsection (2) applies in addition to sections 36 and 40.
- (5) For the purposes of subsection (1) the following are “tax-relief arrangements”—
- (a) double taxation arrangements, and
  - (b) unilateral relief arrangements for a territory outside the United Kingdom.

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### *Limit on credit against corporation tax*

#### **42 Amount of limit**

- (1) Subsection (2) is about the amount of credit allowed under section 18(2) against corporation tax to which a company is liable in respect of any income or chargeable gain.
- (2) The credit must not exceed—

$$R \times IG$$

where—

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

- (3) For the purposes of applying subsection (2), IG is reduced (or extinguished) by any amount allocated to it under—
  - section 52(2) (general deductions),
  - section 53(2) (earlier years' deficits on loan relationships),
  - section 54(2) or (4) (debits on loan relationships),
  - section 55(5) (current year's deficits on loan relationships), or
  - section 56(2) (debits on intangible fixed assets).
- (4) Subsection (2) is to be read with—
  - section 43, which, if the company has a permanent establishment outside the United Kingdom, is about attributing profits to the establishment for the purposes of applying subsection (2),
  - sections 44 to 49, which modify how subsection (2) applies in connection with allowing credit against tax on trade income (as defined in section 44), [F18 section 49B, which requires subsection (2) to be applied separately to certain non-trading credits, and]
  - sections 50 and 51, which require subsection (2) to be applied as if corporation tax were charged in a modified way on profits of the company for the period from loan relationships and intangible fixed assets.

[F19(5) See also section 49A which contains an additional limit on credit allowed in certain cases involving CFCs.]

#### **Textual Amendments**

- F18** Words in s. 42(4) substituted (with effect in accordance with s. 292(9)(10) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 292\(6\)](#)
- F19** S. 42(5) inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\), Sch. 47 paras. 12, 21](#)

#### **Modifications etc. (not altering text)**

- C5** S. 42 excluded by 2010 c. 4, s. 269DL(8)(a) (as inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), Sch. 3 para. 1](#))

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### **[<sup>F20</sup>43 Profits attributable to permanent establishments for purposes of section 42(2)**

- (1) This section applies in determining for the purposes of section 42(2) the amount of the profits of a UK resident company on which corporation tax is or would be chargeable that is attributable to a permanent establishment of the company in a territory outside the United Kingdom.
- (2) The amount of the profits of the company that is attributable to the permanent establishment is the amount that the permanent establishment would have made if it were a distinct and separate enterprise which—
  - (a) engaged in the same or similar activities under the same or similar conditions, and
  - (b) dealt wholly independently with the company.
- (3) In applying subsection (2) assume that—
  - (a) the permanent establishment has the same credit rating as the company, and
  - (b) (subject to subsection (5)) the permanent establishment has such equity and loan capital as it could reasonably be expected to have if the equity and loan capital of the company were allocated in accordance with subsection (4).
- (4) The allocation is one made on a just and equitable basis between the permanent establishments in territories outside the United Kingdom through which the company carries on business and the entity that the company would consist of if each such permanent establishment were an entity distinct and separate from the company.
- (5) If the permanent establishment is in a full treaty territory (within the meaning of Chapter 3A of Part 2 of CTA 2009) subsection (3)(b) has effect subject to the double taxation arrangements having effect in relation to the territory.
- (6) Subsections (3)(b) to (5) prevail over any allotment of equity or loan capital to the permanent establishment made by the company.
- (7) If the company is an insurance company <sup>F21</sup>... , in applying subsection (2) assume that the permanent establishment has such free assets as it would have in the circumstances described in that subsection.
- (8) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision as to the meaning of “free assets” in subsection (7).]

#### **Textual Amendments**

**F20** S. 43 substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 27, 31, 37](#)

**F21** Words in s. 43(7) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 233](#)

### **44 Credit against tax on trade income**

- (1) Apply section 42(2) in accordance with subsections (2) and (3) if the tax against which the credit is to be allowed is corporation tax on income that is trade income.
- (2) The amount of the credit must not exceed the corporation tax attributable to the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

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- (3) In calculating the amount of corporation tax attributable to any income, take into account—
- (a) deductions which would be allowed in calculating the company's liability, and
  - (b) expenses of a company connected with the company, so far as reasonably attributable to the income,
- but see section 49 (restriction if company is a bank or is connected with a bank).
- (4) In subsection (3)(a) “deductions” includes a just and reasonable apportionment of deductions that relate—
- (a) partly to the transaction, arrangement or asset from which the income arises, and
  - (b) partly to other matters.
- (5) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of subsection (3)(b).
- (6) In this section “trade income” means—
- (a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),
  - (b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),
  - (c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and
  - (d) any other income or profits which by a provision of ICTA is or are—
    - (i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or
    - (ii) calculated in the same way as the profits of a trade,
- but does not include income to which section 99 of this Act (insurance companies) applies.
- (7) In subsection (6) the references—
- (a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and
  - (b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,
- do not include income that would, but for the repeal by CTA 2009 of section 103 of ICTA (post-cessation receipts where pre-cessation profits calculated on an earnings basis and other post-cessation receipts that become due or are ascertained after cessation), have been chargeable to corporation tax under that section.

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

- (1) If a company (“A”) carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person (“B”) a main purpose of which is to alter the effect of section 44(2) and (3) in relation to A, income received in pursuance of the scheme or arrangement is to be treated for the purposes of section 44(2) and (3) as trade income of B (and not as income of A).
- (2) Income of a person (“D”) is to be treated for the purposes of section 44 as trade income (if it is not otherwise trade income) of D if—
- (a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person (“C”),

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- (b) had C received the income, it would be reasonable to assume that it would be trade income of C, and
  - (c) a main purpose of the scheme or arrangement is to produce the result that section 44(2) and (3) will not have effect in relation to the income because it is received by D.
- (3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to the transaction.
- (4) In subsection (3)—
- “relevant person” means—
  - (a) D, or
  - (b) any other connected person who is a party to the scheme or arrangement mentioned in subsection (2), and
- “relevant transaction” means any of the transactions giving rise to the income mentioned in subsection (2)(b).
- (5) In subsections (2) to (4) “connected person” means a person with whom D is connected.
- (6) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of subsection (5).
- (7) In this section “trade income” has the same meaning as in section 44.

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

- (1) If an asset is in a hedging relationship with a derivative contract, section 44(2) applies in relation to the asset as if the income arising from the asset is the income arising from the asset and the contract taken together, subject to subsection (2).
- (2) Take account of the income or loss from the derivative contract only so far as reasonably attributable to the hedging relationship.
- (3) For the purposes of subsection (1), an asset is in a hedging relationship with a derivative contract if—
  - (a) the asset is acquired as a hedge of risk in connection with the contract, or
  - (b) the contract is entered into as a hedge of risk in connection with the asset.
- (4) If an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that is conclusive for the purposes of subsection (3).

#### **47 Applying section 44(2): royalty income**

- (1) Subsection (2) applies if—
  - (a) the arrangements are double taxation arrangements, and
  - (b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.
- (2) For the purposes of section 44(2)—
  - (a) royalty income arising in more than one foreign jurisdiction in an accounting period in respect of the asset is to be treated as income arising from a single asset, and

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

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

#### **48 Applying section 44(2): “portfolio” of transactions, arrangements or assets**

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

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

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

(4) Condition C is that—

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

(b) a separate calculation of income in respect of each transaction, arrangement or asset for the purposes of section 44(2) would not, compared with an aggregated calculation, make a material difference to the amount of credit for foreign tax which is allowable.

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

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

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

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

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

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

(3) In this section—

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

“included funding costs” means the total of the funding costs that are—

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

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

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

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

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

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- (4) The following provisions apply for the purposes of this section—  
 section 1120 of CTA 2010 (meaning of “bank”), and  
 section 1122 of CTA 2010 (meaning of “connected”).

#### **[<sup>F22</sup>49A Limit on credit in cases involving qualifying loan relationships of CFCs**

- (1) This section applies if—
- (a) a claim is made under Chapter 9 of Part 9A (controlled foreign companies: exemptions for profits from qualifying loan relationships) in relation to an accounting period (“the relevant period”) of a CFC (“the creditor CFC”),
  - (b) in the relevant period, the creditor CFC has a qualifying loan relationship in relation to which another CFC is the ultimate debtor by virtue of section 371IG(4) or (5), and
  - (c) a UK resident company (“the relevant UK company”) has loan relationship credits which arise in the relevant period from—
    - (i) loan B (see section 371IG(3)(b)), or
    - (ii) loans out of which loan B is wholly or partly funded (directly or indirectly).

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

$$R \times S$$

where—

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

S is—

- (a) the relevant UK company's share of the relevant profit amount (see subsection (4)), or
- (b) if only X% of the total amount of the loan relationship credits falling within subsection (1)(c) arises in the accounting period, X% of the relevant UK company's share of the relevant profit amount.

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

- (3) The limit on credit contained in subsection (2) is in addition to the limit given by section 42(2).
- (4) Take the following steps to determine the relevant profit amount and the relevant UK company's share of that amount.

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

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

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



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- (5) The following persons (apart from the creditor CFC) fall within this subsection—
- (a) the person who made loan B, and
  - (b) any person who has made or received a loan out of which loan B is wholly or partly funded (directly or indirectly).
- (6) In this section—
- (a) references to loan B do not include any part of loan B—
    - (i) which loan A (see section 371IG(3)(a)) is not made and used to fund,  
or
    - (ii) in relation to which the requirement of section 371IG(3)(c) is not met,
  - (b) “loan relationship credit” means, in relation to a person, a credit which the person has under Part 5 of CTA 2009 or would have were the person a UK resident company within the charge to corporation tax, and
  - (c) “loan” has the same meaning as it has in Chapter 9 of Part 9A.]

#### Textual Amendments

**F22** S. 49A inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 13, 21](#)

#### [<sup>F23</sup>49B Applying section 42(2) to non-trading credits from loan relationships etc

- (1) Subsection (2) applies for the purposes of section 42(2) if—
- (a) the company has a non-trading credit relating to an item, and
  - (b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax.

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

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

where—

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

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

D is the amount given by subsection (3).

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

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

- (a) in the same accounting period, and
- (b) in respect of the same loan relationship, derivative contract or intangible fixed asset,

as the non-trading credit.

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

*Step 3* Calculate the amount given by—

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#### TNTD – A

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

(4) In this section—

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

“non-trading credit” means—

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

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

“non-trading debit” means—

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

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

#### Textual Amendments

**F23** S. 49B inserted (with effect in accordance with s. 292(9)(10) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 292\(7\)](#)

#### *Calculating tax for purposes of section 42(2)*

#### **50 Tax for period on loan relationships**

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

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

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

(4) In this section—

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

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

#### **51 Tax for period on intangible fixed assets**

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

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

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- (3) For the purposes of subsection (1), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (4) In this section—
  - “non-trading credit” means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and
  - “TNTC” is the total amount of the company's non-trading credits for the period.

*Allocation of deductions etc to profits for purposes of section 42*

## **52 General deductions**

- (1) Subsection (2) applies for the purposes of section 42 if in the accounting period there is any amount (“the deduction”) that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description.
- (2) The company may allocate the deduction in such amounts, and to such of its profits for the period, as it thinks fit.

## **53 Earlier years' non-trading deficits on loan relationships**

- (1) Subsection (2) applies for the purposes of section 42 if an amount (“the deficit”) is carried forward to the period under section 457(1) of CTA 2009 (non-trading deficits on loan relationships set against profits of subsequent years).
- (2) The deficit can be allocated only to the company's non-trading profits for the period, but the company may allocate the deficit to such of those profits, and in such amounts, as the company thinks fit.
- (3) In this section “non-trading profits” has the meaning given by section 457(5) of CTA 2009.

## **54 Non-trading debits on loan relationships**

- (1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.
- (2) That much of the company's non-trading debits for the period as is given by the formula—

$$\text{TNTD} - (\text{CB} + \text{CF} + \text{GR})$$

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

- (3) Subsection (4) applies for the purposes of section 42 if—
  - (a) the company has at least one non-trading credit for the period that is eligible for double taxation relief, and

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- (b) the company sets the whole or part of XS against profits of the period in pursuance of a current-year provision or claim.
- (4) So much of the company's non-trading debits as is equal to that amount of XS must be allocated to the profits against which that amount of XS is set in pursuance of the current-year provision or claim.
- (5) In this section, if the company has a non-trading deficit (“D”) on its loan relationships for the period—

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

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

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

if

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

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

“carry-back claim” means a claim—

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

- (b) under section 459(1)(b) [<sup>F24</sup>or 463B(1)(b)] of CTA 2009 (carry-back: other companies),

“carry-forward provision” means—

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

- (b) section 457(1) [<sup>F25</sup>, 463G(5) or 463H(4)] of CTA 2009 (other companies),

“current-year provision or claim” means—

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

- (b) a claim under section 459(1)(a) [<sup>F26</sup>or 463B(1)(a)] of CTA 2009 (other companies: setting of deficit against current year's profits),

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

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

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

#### Textual Amendments

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

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- F25** Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 176\(b\)](#)
- F26** Words in s. 54(7) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 176\(c\)](#)

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

- (1) Subsection (5) applies for the purposes of section 42 if conditions A and B are met.
- (2) Condition A is that the company—
  - (a) has no non-trading credits for the period, or
  - (b) has non-trading credits for the period but none of those credits is eligible for double taxation relief.
- (3) For the purposes of subsection (2)(b), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (4) Condition B is that an amount (“the deficit”) is set against any of the company's profits for the period—
  - (a) under section 388(1) of CTA 2009 (insurance company's non-trading deficit on loan relationships set against current year's profits), or
  - (b) under section 459(1)(a) [<sup>F27</sup> or 463B(1)(a)] of CTA 2009 (other company's non-trading deficit on loan relationships set against current year's profits).
- (5) The deficit can be allocated only to profits against which the deficit is set under section 388(1) [<sup>F28</sup>, 459(1)(a) or 463B(1)(a)] of CTA 2009.
- (6) In this section “non-trading credit” means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships).

### Textual Amendments

- F27** Words in s. 55(4)(b) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 177\(a\)](#)
- F28** Words in s. 55(5) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 177\(b\)](#)

## 56 Non-trading debits on intangible fixed assets

- (1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.
- (2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - CF$$

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

- (3) In subsection (2)—

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

- (4) For the purposes of subsection (1), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (5) In this section—
- “non-trading credit” means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and
  - “non-trading debit” means a non-trading debit for the purposes of that Part.

*Taking account of foreign tax underlying dividends*

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

- (1) Subsections (2) and (3) apply if, as a result of provision made by the arrangements, underlying tax is to be taken into account in considering whether any and (if so) what credit is to be allowed against corporation tax, income tax or capital gains tax in respect of a dividend.
- (2) The amount of underlying tax to be taken into account as a result of the provision is to be calculated—
- (a) under section 58 if the dividend is one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, and
  - (b) under section 61 if the dividend is not one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom.
- (3) No underlying tax is to be taken into account as a result of the provision if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of the territory in respect of an amount determined by reference to the dividend.
- (4) See also—
- (a) section 63 (underlying tax paid in the United Kingdom, or otherwise outside the non-UK territory, treated in some cases as underlying tax paid in the non-UK territory), and
  - (b) section 65 (underlying tax paid in respect of profits of a company which pays a dividend treated in some cases as underlying tax paid in respect of profits of company to which dividend is paid).

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

- (1) A calculation under this section (see section 57(2)(a)) is as follows—
- Step 1* Calculate the amount of the foreign tax borne on the relevant profits by the company paying the dividend.
  - Step 2* Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.
  - Step 3* Calculate the amount given by—

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

where—

D is the amount of the dividend,

PA is the amount given by the calculation at Step 2, and

M is the rate of corporation tax applicable to profits of the recipient for the accounting period in which the dividend is received or, if there is more than one such rate, the average rate over the whole of that accounting period.

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

- (a) set off against the recipient's own tax under that law, or
- (b) paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

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

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

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

## 59 Meaning of “relevant profits” in section 58

- (1) This section applies for the purposes of section 58.
- (2) “Relevant profits”, if the dividend is within subsection (3), means the profits in respect of which the dividend is treated as paid for the purposes of section 931H of CTA 2009 (dividends derived from transactions not designed to reduce tax).
- (3) A dividend is within this subsection if—
  - (a) it is received in an accounting period of the recipient in which the recipient is not a small company for the purposes of Part 9A of CTA 2009 (company distributions: see section 931S of that Act), and
  - (b) for the purposes of section 931H of that Act, it is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section).
- (4) “Relevant profits”, if the dividend is not within subsection (3) but is paid for a specified period, means—
  - (a) the distributable profits of that period, plus
  - (b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.
- (5) “Relevant profits”, if the dividend is not within subsection (3) and is not paid for a specified period, means—
  - (a) the distributable profits of the last period for which accounts of the company were made up which ended before the dividend became payable, plus
  - (b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

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- (6) In subsection (4)(b) or (5)(b), the reference to distributable profits of preceding periods does not include—
- (a) profits previously distributed, or
  - (b) profits previously treated as relevant profits for the purposes of [F29 section 58 or 61 of this Act], section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.
- (7) For the purposes of subsection (4)(b) or (5)(b), the profits of the most recent preceding period are to be taken into account first, then the profits of the next most recent preceding period, and so on.
- (8) In this section “distributable profits”, in relation to a company, means the profits available for distribution as shown in accounts relating to the company—
- (a) drawn up in accordance with the law of the country or territory under whose law the company is incorporated or formed, and
  - (b) making no provision for reserves, bad debts, impairment losses or contingencies other than such as is required to be made under the law of that country or territory.
- (9) The reference in subsection (6)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

#### Textual Amendments

**F29** Words in s. 59(6)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by [Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), **4(2)**

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

- (1) Subsection (2) applies if—
- (a) under the arrangements a company resident in the United Kingdom makes a claim for an allowance by way of credit in accordance with this Chapter, and
  - (b) the claim relates to a dividend paid to the company by a company resident outside the United Kingdom.
- (2) The claim may be framed so as to exclude amounts of underlying tax specified for the purpose in the claim.
- (3) Any amounts of underlying tax so excluded are to be left out of account for the purposes of section 57.

## 61 Calculation if section 58 does not apply

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

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

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



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*Step 3* If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—  
set off against the recipient's own tax under that law, or  
paid to the recipient so far as it exceeds the recipient's own tax under that law,  
calculate the amount of the increase.

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

## 62 Meaning of “relevant profits” in section 61

- (1) This section applies for the purposes of section 61.
- (2) “Relevant profits”, if the dividend is paid for a specified period, means—
  - (a) the profits of that period, plus
  - (b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.
- (3) “Relevant profits”, if the dividend is not paid for a specified period but is paid out of specified profits, means those profits.
- (4) “Relevant profits”, if the dividend is paid neither for a specified period nor out of specified profits, means—
  - (a) the profits of the last period for which accounts of the body corporate paying the dividend were made up which ended before the dividend became payable, plus
  - (b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.
- (5) In subsection (2)(b) or (4)(b), the reference to distributable profits of preceding periods does not include—
  - (a) profits previously distributed, or
  - (b) profits previously treated as relevant profits for the purposes of [F30 section 58 or 61 of this Act], section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.
- (6) For the purposes of subsection (2)(b) or (4)(b), the profits of the most recent preceding period are first to be taken into account, then the profits of the next most recent preceding period, and so on.
- (7) In this section “distributable profits”, in relation to a period, means profits available for distribution of the period.
- (8) The reference in subsection (5)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

### Textual Amendments

- F30** Words in s. 62(5)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by [Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), **4(3)**

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*Taking account of tax underlying dividends that is not foreign tax*

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

- (1) If condition A is met, and one of conditions B and C is met, subsection (5) applies for the purpose of allowing, under the arrangements, credit against corporation tax in respect of a dividend paid by a company resident outside the United Kingdom (“the overseas company”) to another company (“the recipient company”).
- (2) Condition A is that the recipient company—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in the overseas company.
- (3) Condition B is that the recipient company is resident in the United Kingdom.
- (4) Condition C is that—
  - (a) the recipient company is resident outside the United Kingdom, but
  - (b) the dividend forms part of the profits of a permanent establishment of the recipient company in the United Kingdom.
- (5) There is to be taken into account, as if it were tax payable under the law of the territory (“territory R”) in which the overseas company is resident—
  - (a) any income tax or corporation tax payable by the overseas company in respect of its profits, and
  - (b) any tax which, under the law of any territory outside the United Kingdom other than territory R, is payable by the overseas company in respect of its profits.
- (6) For the purposes of subsection (2), one company (“S”) is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in S.

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

**64 Meaning of “dividend-paying chain” of companies**

- (1) For the purposes of sections 65, 67 and 70 there is a dividend-paying chain if—
  - (a) condition A is met, and
  - (b) one of conditions B to D is met.
- (2) Condition A is that a company (“the second company”) pays a dividend to another company (“the first company”).
- (3) Condition B is that there is a third company which is a 10% associate of, and pays a dividend to, the second company.
- (4) Condition C is that there is a succession of companies consisting of—
  - (a) a third company which is a 10% associate of, and pays a dividend to, the second company, and
  - (b) a fourth company which is a 10% associate of, and pays a dividend to, the third company.

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- (5) Condition D is that there is a succession of companies consisting of—
- (a) a third company which is a 10% associate of, and pays a dividend to, the second company, and
  - (b) two or more companies (the fourth and fifth companies, and so on) each of which is a 10% associate of, and pays a dividend to, the company above it in the succession.
- (6) For the purposes of this section, a company (“X”) is a 10% associate of another company (“H”) if H—
- (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in X or at least 10% of the ordinary share capital of X.
- (7) For the purposes of subsection (6), a company (“S”) is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in S.

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

- (1) Subsection (4) applies if conditions E and F are met.
- (2) Condition E is that there is a dividend-paying chain (see section 64) in which—
- (a) the first company is the recipient company mentioned in section 63, and
  - (b) the second company is the overseas company mentioned in that section.
- (3) Condition F is that there is underlying tax, payable by a company (“L”) lower in the chain than the second company, that would be taken into account under this Part if—
- (a) the dividend paid by L to the company (“K”) above L in the chain had been paid—
    - (i) by a company resident outside the United Kingdom to a company resident in the United Kingdom, and
    - (ii) at the time when the dividend paid by the second company is received by the first company, and
  - (b) double taxation arrangements had provided for the underlying tax to be taken into account.
- (4) The underlying tax is to be treated—
- (a) for the purposes of section 63(5), and
  - (b) for the purposes of subsection (3),
- as tax paid by K in respect of its profits, but see section 66 (limitations).
- (5) In applying section 63 for the purpose of deciding whether condition F is met, read section 63(2) as if “ , or at least 10% of the ordinary share capital of, ” were inserted after “at least 10% of the voting power in”.
- (6) Section 58 (first method of calculating amount of underlying tax to be taken into account) does not apply for the purposes of subsections (3) and (4) unless the company referred to in subsection (2)(a) is resident in the United Kingdom and, even if that company is resident in the United Kingdom, section 58 applies for those purposes only—
- (a) if K and L are not resident in the same territory, or
  - (b) in such other cases as may be prescribed by regulations made by the Treasury.

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

## **66 Limitations on section 65(4)**

- (1) Section 65(4) is subject to the limitations set out in subsections (2) and (3).
- (2) No tax is to be taken into account in respect of a dividend paid by a company resident in the United Kingdom except—
- (a) corporation tax, and
  - (b) any tax for which the company is entitled to credit under this Part.
- (3) No tax is to be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account, under the provisions of this Part other than section 65(4), had the other company been resident in the United Kingdom.

*Tax underlying dividends: restriction of relief, and particular cases*

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

- (1) Subsection (6) applies if—
- (a) conditions A and B are met, and
  - (b) one of conditions C and D is met.
- (2) Condition A is that a company (“the claimant company”) makes a claim for an allowance by way of credit in accordance with this Part.
- (3) Condition B is that the claim relates to underlying tax on a dividend paid to the claimant company by a company resident outside the United Kingdom (“the overseas company”).
- (4) Condition C is that the underlying tax is, or includes, an amount in respect of tax payable at a high rate by the overseas company and—
- (a) that amount would not be, or would not be included in, the underlying tax, or
  - (b) any part of that amount would not be included in the underlying tax,
- but for the existence of, or but for there having been, an avoidance scheme (see section 68).
- (5) Condition D is that—
- (a) there is a dividend-paying chain (see section 64) in which—
    - (i) the first company is the claimant company, and
    - (ii) the second company is the overseas company, and
  - (b) the underlying tax is, or includes, an amount in respect of tax payable at a high rate by a company lower in the chain than the overseas company and—
    - (i) that amount would not be, or would not be included in, the underlying tax, or
    - (ii) any part of that amount would not be included in the underlying tax, but for the existence of, or but for there having been, an avoidance scheme (see section 68).

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- (6) The amount of credit to which the claimant company is entitled on the claim is to be determined as if the tax payable at a high rate had instead been tax at the relievable rate.
- (7) For the purposes of this section, tax payable by a company is “tax payable at a high rate” so far as the amount payable exceeds the amount that would represent tax at the relievable rate on the profits of the company which, for the purposes of this Part, are taken to bear the payable tax.
- (8) In this section “the relievable rate” means the rate of corporation tax in force when the dividend mentioned in subsection (3) was paid.

## **68 Meaning of “avoidance scheme” in section 67**

- (1) In section 67 “avoidance scheme” means any scheme or arrangement in respect of which each of conditions A to C is met.
- (2) Condition A is that the purpose, or one of the main purposes, of the scheme or arrangement is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.
- (3) Condition B is that the parties to the scheme or arrangement include—
  - (a) the company which is the claimant company for the purposes of section 67,
  - (b) a company related to the claimant company, or
  - (c) a person connected with the claimant company.
- (4) Condition C is that the parties to the scheme or arrangement include a person who was not under the control of the claimant company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.
- (5) For the purposes of subsection (3)(b), a company (“R”) is related to the claimant company if the claimant company—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in R.
- (6) For the purposes of subsection (3)(c), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.
- (7) For the purposes of subsection (4), a person who is a party to a scheme or arrangement is to be taken to have been under the control of the claimant company at all the following times—
  - (a) any time when the claimant company would have been taken (in accordance with sections 450 and 451 of CTA 2010) to have had control of the person for the purposes of Part 10 of CTA 2010 (close companies),
  - (b) any time when the claimant company would have been so taken if sections 450 and 451 of CTA 2010 applied (with the necessary modifications) in the case of partnerships and unincorporated associations as they apply in the case of companies, and
  - (c) any time when the person acted in relation to the scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of the claimant company.

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- (8) For the purposes of subsection (5), the claimant company is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in the claimant company.
- (9) In this section “arrangement” means an arrangement of any kind, whether in writing or not.

## **69 Dividends paid out of transferred profits**

- (1) This section applies if—
- (a) a company resident outside the United Kingdom (“company A”) has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits,
  - (b) some or all of those profits become profits of another company resident outside the United Kingdom (“company B”) otherwise than as a result of the payment of a dividend to company B, and
  - (c) company B pays a dividend out of those profits to another company, wherever resident.
- (2) If this section applies, this Part has effect, so far as relating to the determination of underlying tax in relation to any dividend paid—
- (a) by any company resident outside the United Kingdom (whether or not company B),
  - (b) to a company resident in the United Kingdom,
- as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1) (b).
- (3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom is not to exceed the amount which would have been allowable to that company had those profits become profits of company B as a result of the payment of a dividend by company A to company B.

## **70 Underlying tax reflecting interest on loans**

- (1) Subsection (2) applies if—
- (a) a bank, or a company connected with a bank, makes a claim for an allowance by way of credit in accordance with this Chapter,
  - (b) there is a dividend-paying chain (see section 64) in which—
    - (i) the first company is the claimant, and
    - (ii) the second company is a company resident outside the United Kingdom,
  - (c) the claimant—
    - (i) controls directly or indirectly, or
    - (ii) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in the second company,
  - (d) the claim relates to underlying tax on a dividend paid by the second company,
  - (e) that underlying tax is, or includes, tax payable under the law of a territory outside the United Kingdom on, or by reference to, interest or dividends

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- earned or received in the course of its business by a company (“the receiving company”) which is—
- (i) the second company, or
  - (ii) a company lower in the chain than the second company, and
- (f) section 44 would have applied to the receiving company had it been resident in the United Kingdom.
- (2) The amount of the credit for the tax mentioned in subsection (1)(e) (“the non-UK tax”) is not to exceed the sum equal to corporation tax, at the rate in force at the time the non-UK tax was chargeable, on—
- ID — E*
- where—
- ID is the amount of the interest or dividends mentioned in subsection (1)(e), and  
E is the amount of the receiving company's expenditure which is properly attributable to the earning of that interest or those dividends.
- (3) For the purposes of subsection (1)(a)—
- (a) “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and
  - (b) whether a company is connected with a bank is determined in accordance with section 1122 of CTA 2010.
- (4) For the purposes of subsection (1)(c), the claimant is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in the claimant.

## **71 Foreign taxation of group as single entity**

- (1) Subsections (2) and (3) apply in relation to a claim for credit in respect of underlying tax in relation to a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom if, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in the territory (“the responsible company”) in respect of the aggregate profits, or aggregate profits and aggregate gains, of—
- (a) that company and another company resident in the territory, or
  - (b) that company and two or more other companies resident in the territory,
- taken together as a single taxable entity.
- (2) This Part, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1)(a) or (b) (the “non-resident companies”) to another company (“the payee company”), has effect as if—
- (a) the non-resident companies, taken together, were a single company,
  - (b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and
  - (c) that single company were related to the payee company if the company which actually pays the dividend is related to the payee company.
- (3) In particular, this Part has effect as if—
- (a) the relevant profits for the purposes of section 58 is a single aggregate figure in respect of that single company, and

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- (b) the tax paid in the territory by the responsible company is tax paid in the territory by that single company.
- (4) For the purposes of this section, a company (“X”) is related to another company (“H”) if H—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in X.
- (5) For the purposes of subsection (4), H is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in H.

*<sup>F31</sup> Adjustment of foreign tax on profits of overseas permanent establishment*

#### Textual Amendments

**F31** Ss. 71A, 71B and cross-heading inserted (with effect in accordance with s. 30(5)(7) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 30\(2\)](#)

#### 71A Circumstances in which section 71B applies

- (1) Section 71B has effect in relation to an accounting period of a company resident in the United Kingdom which has an overseas permanent establishment (“the PE”) if, in that or any earlier accounting period, condition A or B is met.
- (2) Condition A is met in relation to an accounting period if, for the purposes of any tax chargeable under the law of the PE territory—
  - (a) a loss or other amount attributable to the PE is deducted from or otherwise allowed against amounts of any person other than the company, and
  - (b) as a result, there is a decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period.
- (3) Condition B is met in relation to an accounting period if—
  - (a) tax is chargeable under the law of the PE territory in respect of the aggregate profits, or aggregate profits or gains, of the PE and persons other than the company,
  - (b) a loss or other amount attributable to the PE is deducted from or otherwise allowed against, or is brought into account as a deduction or other allowance in calculating, amounts other than amounts of the PE, and
  - (c) as a result, there is a decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period.
- (4) In this section—
  - “foreign taxable period” means any period in respect of which the tax in question is chargeable under the law of the PE territory, and
  - “the PE territory” means the territory in which the PE is situated.



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

- (1) For the purposes of allowing credit relief under this Part, the amount of foreign tax paid in respect of the company's qualifying income from the PE in the accounting period is reduced (but not below nil) by the relevant amount for that period.
- (2) In calculating any amount chargeable to corporation tax, any deduction for an amount of foreign tax paid in respect of the company's qualifying income from the PE in the accounting period is reduced (but not below nil) by the relevant amount for that period.
- (3) In this section “the relevant amount” for the accounting period means the total of—
  - (a) the amount of the decrease in the tax chargeable in respect of a foreign taxable period ending in the accounting period (if the accounting period is one in relation to which condition A or B in section 71A is met), and
  - (b) any excess tax carried forward to the accounting period.
- (4) For this purpose excess tax is carried forward to the accounting period so far as the relevant amount for the previous accounting period exceeds the amount of foreign tax paid in respect of the company's qualifying income from the PE in that previous period.
- (5) In determining the relevant amount, a deduction or allowance of the kind referred to in condition A or B in section 71A is to be ignored if it results in a deduction or other allowance that is reduced under section 259JC (counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction).
- (6) If, for any accounting period, it becomes necessary for the relevant amount to be reduced or increased, an adjustment may be made (whether or not by an officer of Revenue and Customs)—
  - (a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and
  - (b) despite any time limit imposed by or under any enactment.
- (7) In this section “the company's qualifying income from the PE” means the profits of the PE which are profits chargeable under Chapter 2 of Part 3 of CTA 2009 of a trade carried on partly, but not wholly, outside the United Kingdom.]

### *Unrelieved foreign tax on profits of overseas permanent establishment*

## **72 Application of section 73(1)**

- (1) Section 73(1) applies if, in an accounting period of a company resident in the United Kingdom—
  - (a) the amount of the credit for foreign tax which under the arrangements would, if section 42 were ignored, be allowable against corporation tax in respect of the company's qualifying income from an overseas permanent establishment, exceeds
  - (b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the company's qualifying income from that overseas permanent establishment.
- (2) For the purposes of subsection (1) and section 73(1), the company's qualifying income from an overseas permanent establishment is the profits of the overseas permanent establishment which are—

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- (a) profits, chargeable under Chapter 2 of Part 3 of CTA 2009, of a trade carried on partly, but not wholly, outside the United Kingdom, <sup>F32</sup> ...

<sup>F32</sup>(b) .....

- (3) In sections 73 to 78—

“the company” means the company mentioned in subsection (1),

“the excess” means the excess referred to in that subsection,

“the PE” means the overseas permanent establishment mentioned in that subsection, and

“period A” means the accounting period mentioned in that subsection.

#### Textual Amendments

**F32** S. 72(2)(b) and word omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 234](#)

### 73 Carry-forward and carry-back of unrelieved foreign tax

- (1) For the purposes of allowing credit relief under this Part, the excess is to be treated—
- as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in the accounting period after period A (whether or not the company in fact has any qualifying income from that source in the accounting period after period A), or
  - in accordance with the rules in section 74, as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in one or more of the recent periods, or
  - partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).
- (2) If in period A the company ceases to have the PE, the excess, so far as it is not treated as mentioned in subsection (1)(b), is to be reduced to nil (so that none of the excess is to be treated as mentioned in subsection (1)(a)).
- (3) If an amount is treated as mentioned in subsection (1)(b) it is not to be so treated for the purpose of any further application of subsection (1).
- (4) In subsection (1)(b) “recent period” means an accounting period which is earlier than period A but begins not more than 3 years before period A.

### 74 Rules for carrying back unrelieved foreign tax

- (1) This section sets out the rules mentioned in section 73(1)(b).
- (2) The first rule is that—
- credit for the excess, or for any remaining balance of the excess, is allowed against corporation tax in respect of a later recent period, before
  - credit for any of the excess is allowed against corporation tax in respect of any earlier recent period.
- (3) The second rule is that, before allowing credit for any of the excess against corporation tax in respect of income of any particular accounting period (“period P”), credit for foreign tax is allowed—

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- (a) first for foreign tax in respect of the income of period P, other than amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period other than period P, and
  - (b) then for amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period before period P.
- (4) In subsection (2) “recent period” means an accounting period which is earlier than period A but begins not more than 3 years before period A.

## **75 Two or more establishments treated as a single establishment**

- (1) Subsection (2) applies if, under the law of a territory outside the United Kingdom, tax is charged in respect of the profits of two or more overseas permanent establishments in that territory, taken together.
- (2) For the purposes of the provisions of sections 72 to 78 other than the excepted provisions, those overseas permanent establishments are to be treated as if they together constituted a single overseas permanent establishment.
- (3) In subsection (2) “the excepted provisions” means section 73(2), this section and section 77.

## **76 Former and subsequent establishments regarded as distinct establishments**

- (1) If the company—
  - (a) at any time ceases to have a particular overseas permanent establishment in a particular territory (“the old establishment”), but
  - (b) subsequently again has an overseas permanent establishment in that territory (“the new establishment”),the old establishment and the new establishment are, for the purposes of the provisions of sections 72 to 78 other than the excepted provisions, to be regarded as different overseas permanent establishments.
- (2) In subsection (1) “the excepted provisions” means sections 73(2), 75 and 77.

## **77 Claims for relief under section 73(1)**

- (1) The excess is to be treated as mentioned in section 73(1) only on a claim.
- (2) A claim under subsection (1) must specify—
  - (a) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(a), and
  - (b) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(b).
- (3) A claim under subsection (1) must be made not more than—
  - (a) 4 years after the end of period A, or
  - (b) if later, 1 year after the end of the accounting period in which the foreign tax concerned is paid.

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## 78 Meaning of “overseas permanent establishment”

- (1) For the purposes of sections [F33 71A] to 76 “overseas permanent establishment” means [F34, in relation to a company,] a permanent establishment through which the company carries on a trade in a territory outside the United Kingdom.
- (2) In subsection (1) “permanent establishment” —
- if the arrangements are double taxation arrangements [F35 which contain a relevant non-discrimination provision], has the meaning given by the arrangements, and
  - if the arrangements are double taxation arrangements [F36 which do not contain a relevant non-discrimination provision], or if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom, [F37 has the meaning given by the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development in July 2010 (“the OECD”) or such other document published by the OECD in place of it as is designated from time to time by order made by the Treasury.]
- [F38(3) In subsection (2) “relevant non-discrimination provision” means a provision to the effect that the taxation on a permanent establishment of an enterprise of a state which is party to the arrangements (a “contracting state”) is not to be less favourably levied in any other contracting state than the taxation levied on enterprises of that other contracting state carrying on the same activities.]

### Textual Amendments

- F33** Word in s. 78(1) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\), s. 30\(3\)\(a\)](#)
- F34** Words in s. 78(1) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\), s. 30\(3\)\(b\)](#)
- F35** Words in s. 78(2)(a) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 13 paras. 28\(2\)\(a\), 31](#)
- F36** Words in s. 78(2)(b) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 13 paras. 28\(2\)\(b\)\(i\), 31](#)
- F37** Words in s. 78(2)(b) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 13 paras. 28\(2\)\(b\)\(ii\), 31](#)
- F38** S. 78(3) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 13 paras. 28\(3\), 31](#)

*Action after adjustment of amount payable by way of UK or foreign tax*

## 79 Time limits for action if tax adjustment makes credit excessive or insufficient

- (1) Subsection (2) applies to a claim or assessment if—
- the amount of any credit given under the arrangements is reduced under section 34, or becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any other territory,
  - the reduction or adjustment gives rise to the claim or assessment, and
  - the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.
- (2) Nothing in—
- the Tax Acts, and

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- (b) the enactments relating to capital gains tax, limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.
- (3) In subsection (1)(c) “material determination” means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

## **80 Duty to give notice that adjustment has rendered credit excessive**

- (1) This section applies if—
  - (a) any credit for foreign tax has been allowed to a person under the arrangements,
  - (b) later, the amount of that credit is reduced under section 34, or becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom, and
  - (c) the reduction or adjustment is not a Lloyd's adjustment (see subsection (5)).
- (2) The person must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.
- (3) Notice under subsection (2) is to be given—
  - (a) to an officer of Revenue and Customs, and
  - (b) within one year from when the reduction or adjustment is made.
- (4) If the person fails to comply with the requirements imposed by subsections (2) and (3), the person is liable to a penalty not greater than the amount by which the credit has been reduced or has become excessive as a result of the adjustment.
- (5) For the purposes of subsection (1)(c), the reduction or adjustment is a “Lloyd's adjustment” if the consequences of the reduction or adjustment in relation to the credit are to be given effect in accordance with regulations under—
  - (a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or
  - (b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).
- (6) In this section so far as it relates to capital gains tax “notice” means notice in writing.

*Schemes and arrangements designed to increase relief: anti-avoidance*

## **[<sup>F39</sup>81 Countering effect of avoidance arrangements**

- (1) This section applies if each of conditions A to D of section 82 is met in relation to a person.
- (2) The effects of a scheme or arrangement that are referable to the purpose referred to in condition B of that section are to be counteracted by the making of such adjustments as are necessary.
- (3) Any adjustments required to be made by this section (whether or not by an officer of Revenue and Customs) may be made by way of—
  - (a) an assessment,
  - (b) the modification of an assessment, or
  - (c) amendment or disallowance of a claim,

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or otherwise.]

#### Textual Amendments

**F39** S. 81 substituted (with effect in accordance with s. 31(6) of the amending Act) by [Finance Act 2018](#) (c. 3), s. 31(2)

## 82 Conditions for the purposes of section 81(1)

- (1) Conditions A to D are the conditions mentioned in section 81(1).
- (2) Condition A is that, in respect of any income or chargeable gain—
  - (a) taken into account for the purposes of determining a person's liability to UK tax in a chargeable period, or
  - (b) to be taken into account for the purposes of determining a person's liability to UK tax in a chargeable period,
 there is an amount of foreign tax for which, under the arrangements, credit is allowable against UK tax for the period.
- (3) Condition B is that there is a scheme or arrangement the main purpose of which, or one of the main purposes of which, is to cause an amount of foreign tax to be taken into account in the person's case for the period.
- (4) Condition C is that the scheme or arrangement is within section 83.
- (5) Condition D is that T is more than a minimal amount, where T is the sum of—
  - (a) the total amount of the claims for credit that the person has made, or is in a position to make, for the period (“the counteraction period”), and
  - (b) the total amount of all connected-person claims.
- (6) In subsection (5) “connected-person claim” means a claim that any person connected to the person has made, or is in a position to make, for any chargeable period that overlaps the counteraction period by at least one day.
- (7) In this section—
  - “chargeable period”, in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992),
  - “foreign tax” includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory, and
  - “UK tax” means income tax, corporation tax or capital gains tax.
- (8) Section 286 of TCGA 1992 (meaning of “connected”) applies for the purposes of subsection (6) so far as applying in relation to capital gains tax.

## 83 Schemes and arrangements referred to in section 82(4)

- (1) For the purposes of section 82(4), a scheme or arrangement is within this section if it is within subsection (2) or (4).
- (2) A scheme or arrangement is within this subsection if—
  - (a) it is not an underlying-tax scheme or arrangement, and

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- (b) one or more of sections 84 to 88 apply to it.
- (3) For the purposes of this section, a scheme or arrangement is an “underlying-tax” scheme or arrangement if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by an overseas-resident body corporate to be taken into account in a person's case.
- (4) A scheme or arrangement is within this subsection if—
  - (a) it is an underlying-tax scheme or arrangement, and
  - (b) one or more of sections 84 to 88 would, on the assumption in subsection (5), apply to it.
- (5) The assumption is that the body corporate is resident in the United Kingdom.
- (6) Nothing in subsection (5) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.
- (7) In subsection (3) “overseas-resident” means resident in a territory outside the United Kingdom.

#### **84 Section 83(2) and (4): schemes enabling attribution of foreign tax**

- (1) This section applies to a scheme or arrangement if—
  - (a) the scheme or arrangement enables a participant to pay, in respect of a source of income or chargeable gain, an amount of foreign tax, and
  - (b) all or part of that amount of foreign tax is properly attributable to another source of income or chargeable gain.
- (2) In subsection (1) “participant” means a person who is party to, or concerned in, the scheme or arrangement.

#### **85 Section 83(2) and (4): schemes about effect of paying foreign tax**

- (1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person (“C”) who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for [<sup>F40</sup>in respect of the payment of an amount of foreign tax (“the FT amount”)].
- [<sup>F41</sup>(2) The condition is that, when C entered into the scheme or arrangement, it could reasonably be expected that the effect on the foreign-tax total of the FT amount being paid or payable would be to increase that total by less than amount X.]
- (3) In [<sup>F42</sup>subsection (2)]—
  - “the foreign-tax total” means the amount found by—
    - (a) totalling the amounts of foreign tax paid or payable by the participants in respect of the transaction or transactions forming part of the scheme or arrangement, and
    - (b) taking into account any reliefs that arise to the participants, including any reliefs arising to any one or more of the participants as a consequence of [<sup>F43</sup>the FT amount being paid or payable <sup>F44</sup>...], and
  - “amount X” means the amount allowable to C as a credit in respect of the payment of the FT amount.

*Status: Point in time view as at 12/02/2019.*

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(4) In subsection (3)—

“participant” means a person who is party to, or concerned in, the scheme or arrangement, and

“reliefs” means reliefs, deductions, reductions or allowances against or in respect of any tax.

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

#### Textual Amendments

- F40** Words in s. 85(1) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(a\)](#)
- F41** S. 85(2) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(b\)](#)
- F42** Words in s. 85(3) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(c\)\(i\)](#)
- F43** Words in s. 85(3) substituted (with effect in relation to amounts of foreign tax payable on or after 21.10.2009 in accordance with [Sch. 11 para. 3](#) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 2\(3\)](#)
- F44** Words in s. 85(3) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(c\)\(ii\)](#)

#### [<sup>F45</sup>85A Section 83(2) and (4): schemes involving deemed foreign tax

- (1) This section applies to a scheme or arrangement if in relation to a claimant—
- an amount (“amount X”) is treated by virtue of a provision of the Tax Acts as if it were an amount of foreign tax paid or payable [<sup>F46</sup>by the claimant] in respect of a source of income, and
  - condition A or B is met.
- (2) Condition A is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement, no real foreign tax would be paid or payable by a participant.
- (3) Condition B is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement—
- an amount of real foreign tax (“the RFT amount”) would be paid or payable by a participant, but
  - the effect on the foreign-tax total of the RFT amount being so paid or payable would be to increase the foreign-tax total by less than the amount allowable to the claimant as a credit in respect of amount X.
- (4) In this section—
- “claimant” means a person who for a chargeable period has claimed, or is in a position to claim, for any credit that under the arrangements is to be allowed for foreign tax;
- “the foreign-tax total” has the meaning given by section 85(3), except that the reference to “the FT amount being paid or payable [<sup>F47</sup>by C]” must be read as a reference to “the RFT amount being paid or payable by any of them”;
- “income” includes a chargeable gain;



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“ participant ” means a person who is party to, or concerned in, the scheme or arrangement;

“ real foreign tax ” means—

- (a) in a case involving section 10 (accrued income profits), the foreign tax chargeable in respect of the interest on the securities, as mentioned in subsection (1)(c) of that section,
- (b) <sup>F48</sup> ...
- (c) in any other case, the foreign tax chargeable in respect of the source of income of which the source mentioned in subsection (1)(a) is representative.]

#### Textual Amendments

- F45** S. 85A inserted (with effect in accordance with Sch. 11 para. 4(2)(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 4\(1\)](#)
- F46** Words in s. 85A(1)(a) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(2\)\(a\)](#)
- F47** Words in s. 85A(4) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(2\)\(b\)](#)
- F48** Words in s. 85A(4) omitted (1.1.2014) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 1 para. 52](#), [Sch. 29 para. 48\(2\)](#)

## 86 Section 83(2) and (4): schemes about claims or elections etc

- (1) This section applies to a scheme or arrangement if <sup>F49</sup> ...—
  - (a) a step is taken by a participant, or
  - (b) a step that could have been taken by a participant is not taken,and that action or failure to act has the effect of increasing, or giving rise to, a claim by a participant for an allowance by way of credit under this Part.
- (2) The steps mentioned in subsection (1) are steps that may be taken—
  - (a) under the law of any territory, or
  - (b) under double taxation arrangements made in relation to any territory.
- (3) The steps mentioned in subsection (1) include—
  - (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
  - (b) making elections for tax purposes.

[<sup>F50</sup>(3A) Reference in subsection (1) to a step that is taken or not taken by a participant includes one that was taken or not taken by a participant before the scheme or arrangement was made.

(3B) The reason for taking or not taking a step does not matter so long as it has the effect mentioned in subsection (1).]

- (4) In subsection (1) “participant” means a person who is party to, or concerned in, the scheme or arrangement.

*Status: Point in time view as at 12/02/2019.*

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#### Textual Amendments

- F49** Words in s. 86(1) omitted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 6\(1\)\(a\)](#)
- F50** S. 86(3A)(3B) inserted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 6\(1\)\(b\)](#)

### 87 Section 83(2) and (4): schemes that would reduce a person's tax liability

- (1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person [<sup>F51</sup>“P”] who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for foreign tax.
- (2) The condition is that amount A is less than amount B.
- (3) Amount A is [<sup>F52</sup>the total amount of UK tax payable by P and such persons (if any) as are connected with P] in respect of income and chargeable gains arising in the chargeable period.
- (4) Amount B is [<sup>F53</sup>the total amount of UK tax that would be payable by P and such persons (if any) as are connected with P] in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.
- (5) In this section “UK tax” means income tax, corporation tax and capital gains tax.
- (6) In this section so far as it relates to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).
- [<sup>F54</sup>(7) For the purposes of this section, whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.]

#### Textual Amendments

- F51** Letter in s. 87(1) inserted (with effect in accordance with s. 31(7) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 31\(3\)\(a\)](#)
- F52** Words in s. 87(3) substituted (with effect in accordance with s. 31(7) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 31\(3\)\(b\)](#)
- F53** Words in s. 87(4) substituted (with effect in accordance with s. 31(7) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 31\(3\)\(c\)](#)
- F54** S. 87(7) inserted (with effect in accordance with s. 31(7) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 31\(3\)\(d\)](#)

### 88 Section 83(2) and (4): schemes involving tax-deductible payments

- (1) This section applies to a scheme or arrangement if the scheme or arrangement includes—
  - (a) the making by a person (“P”) of a relevant payment or payments, and
  - (b) the giving, in respect of the payment or payments, of qualifying consideration.

*Status: Point in time view as at 12/02/2019.*

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- (2) For the purposes of subsection (1), a payment is a “relevant payment” if all or part of it may be brought into account—
  - (a) in calculating P's income for the purposes of income tax or corporation tax, or
  - (b) in calculating P's chargeable gains for the purposes of capital gains tax.
- (3) For the purposes of subsection (1), consideration is “qualifying consideration” if—
  - (a) all or part of it consists of a payment made to P or a person connected with P, and
  - (b) tax is chargeable in respect of the payment under the law of a territory outside the United Kingdom.
- (4) In this section “payment” includes a transfer of money's worth.
- (5) For the purposes of this section, whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

**F55 89 Contents of counteraction notice**

.....

**Textual Amendments**

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

**F55 90 Consequences of counteraction notices**

.....

**Textual Amendments**

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

**F55 91 Counteraction notices given before tax return made**

.....

**Textual Amendments**

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

**F55 92 Counteraction notices given after tax return made**

.....

*Status: Point in time view as at 12/02/2019.*

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#### Textual Amendments

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

### **<sup>F55</sup>93 Amendment, closure notices and discovery assessments in section 92 cases**

.....

#### Textual Amendments

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

### **<sup>F55</sup>94 Information made available for the purposes of section 92(4)**

.....

#### Textual Amendments

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

### **<sup>F55</sup>95 Interpretation of sections 89 to 94**

.....

#### Textual Amendments

**F55** Ss. 89-95 omitted (with effect in accordance with s. 31(6) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\), s. 31\(4\)](#)

## *Insurance companies*

### **96 Companies with overseas branches: restriction of credit**

(1) Subsection (4) applies if credit for foreign tax—

- (a) which is payable in respect of insurance business carried on by a company through a permanent establishment in the non-UK territory, and
- (b) which is calculated otherwise than wholly by reference to profits arising in the non-UK territory,

is to be allowed (in accordance with this Part) against corporation tax charged under section 35 of CTA 2009 <sup>F56</sup>... in respect of the profits <sup>F57</sup>... of [<sup>F58</sup>non-BLAGAB long-term business] carried on by the company in an accounting period (in this section called “the relevant UK-taxable profits”).

*Status: Point in time view as at 12/02/2019.*

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- (2) For the purposes of subsection (1)(b), the cases in which foreign tax is “calculated otherwise than wholly by reference to profits arising in the non-UK territory” are those cases in which the charge to tax in the non-UK territory is within subsection (3).
- (3) A charge to tax is within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in calculating the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.
- (4) If this subsection applies, the amount of the credit is not to exceed the greater of—
- any such part of the foreign tax as is charged by reference to profits arising in the non-UK territory, and
  - the shareholders' share of the foreign tax.
- (5) For the purposes of subsection (4), the shareholders' share of the foreign tax is so much of that tax as is represented by the fraction—
- $$\frac{A}{B}$$
- where—
- A is an amount equal to the amount of the relevant UK-taxable profits before making any deduction authorised by subsection (7), and
- B is an amount equal to the excess of—
- the amount taken into account as receipts of the company in calculating those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over
  - the amount taken into account as expenses in calculating those profits.
- (6) If there is no such excess, or if the profits are greater than any excess, the whole of the foreign tax is the shareholders' share; and, subject to that, if there are no profits, none of the foreign tax is the shareholders' share.
- (7) If, by virtue of this section, the credit for any foreign tax is less than it otherwise would be, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the relevant UK-taxable profits.

#### Textual Amendments

**F56** Words in s. 96(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 235\(a\)](#)

**F57** Words in s. 96(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 235\(b\)](#)

**F58** Words in s. 96(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 235\(c\)](#)

### [<sup>F59</sup>97 Companies with more than one category of business: restriction of credit

- (1) This section applies if—
- an insurance company carries on more than one category of long-term business in an accounting period, and
  - there arises to the company in that period any income or gain (“the relevant income”) in respect of which credit for foreign tax is to be allowed under the arrangements.

*Status: Point in time view as at 12/02/2019.*

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- (2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable, in accordance with Part 2 of FA 2012, to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with subsection (3), is attributable to that category of business.
- (3) The fraction of the foreign tax that is attributable to the category of business in question is the fraction given by—

$$\frac{\text{RPRI TRI}}{\text{TRI}}$$

where—

RPRI is the amount of the relevant income referable to the category of business in question in accordance with section 97A, and

TRI is the total amount of the relevant income.

#### Textual Amendments

**F59** Ss. 97, 97A substituted (17.7.2012) for s. 97 by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 236](#)

### **97A Commercial allocation of relevant income to different categories of long-term business**

- (1) The amount of the relevant income that, for the purposes of section 97, is to be regarded as referable to a category of business is to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the relevant income arises.
- (2) A method is an “acceptable commercial method” if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of section 97 for determining for a period of account the amount of any income or gain arising in the period that is referable to a particular category of long-term business carried on by the company.
- (3) The Treasury may make regulations for the purposes of this section—
- (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
  - (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.
- (4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account must be consistent with the method adopted for the purposes of section 98 or 115 of FA 2012 for that period.]

#### Textual Amendments

**F59** Ss. 97, 97A substituted (17.7.2012) for s. 97 by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 236](#)

### **<sup>F60</sup>98 Attribution for section 97 purposes if category is gross roll-up business**

.....

*Status: Point in time view as at 12/02/2019.*

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### Textual Amendments

**F60** S. 98 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 237](#)

## 99 Allocation of expenses etc in calculations under section 35 of CTA 2009

- (1) Subsection (2) has effect if—
- (a) an insurance company carries on any category of insurance business in a period of account,
  - (b) a calculation in accordance with the provisions applicable for the purposes of section 35 of CTA 2009 (charge on trade profits) falls to be made in relation to that category of business for that period, and
  - (c) there arises to the company in that period any income or gain in respect of which credit for foreign tax is to be allowed under the arrangements.
- (2) The amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned (“the relevant income”) is to be limited by treating the amount of the relevant income as reduced in accordance with sections 100 and 101.
- (3) In determining the amount of credit for foreign tax which is to be allowed as mentioned in subsection (2), the relevant income is not to be reduced except in accordance with that subsection.
- (4) If a 75% subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—
- (a) the purpose, or one of the main purposes, of the scheme or arrangement is to prevent or restrict the application of subsection (2) to the insurance company, and
  - (b) the subsidiary does not carry on insurance business of any description,
- the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary is to be found by setting off against that item the amount of expenses that would be attributable to it under section 100(1) if that item had arisen directly to the insurance company.
- (5) If the credit allowed for any foreign tax is, by virtue of subsection (2), less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the profits of the category of business concerned.
- (6) If, by virtue of subsection (4), the credit allowed for any foreign tax is less than it would be apart from that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the income of the 75% subsidiary.
- (7) For the purposes of the operation of this section in relation to any income or gain in respect of which credit is to be allowed under the arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction of the foreign tax that is attributable to that category of business in accordance with sections 97 and [F6197A].

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### Textual Amendments

**F61** Word in s. 99(7) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 238](#)

## 100 First limitation for purposes of section 99(2)

(1) The first limitation for the purposes of section 99(2) is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(2) For the purposes of subsection (1), the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(3) In subsection (2) “the appropriate fraction” means the fraction given by—

$$\frac{RI}{TI}$$

where—

RI is the amount of the relevant income before any reduction in accordance with section 99(2), and

TI is the total income of the category of business concerned for the period of account in question, but if that would result in TI being nil, TI is instead the amount described in subsection (4).

(4) That amount is so much in total of the income and gains—

- (a) which arise to the company in the period of account in question, and
- (b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

(5) Subsection (4) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).

(6) In this section “the relevant income” has the meaning given by section 99(2).

## 101 Second limitation for purposes of section 99(2)

(1) If—

- (a) the amount of the relevant income after any reduction under section 100(1), exceeds—
  - (b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,
- the second limitation is to treat the relevant income as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

(2) In subsection (1) “the relevant fraction” means the fraction given by—



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## RI

### The referable share of total relievable income and gains

where—

“RI” is the amount of the relevant income before any reduction in accordance with section 99(2), and

“the referable share of total relievable income and gains” is so much in total of the income and gains—

- (a) which arise to the company in the period of account in question, and
- (b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

- (3) In subsection (1), any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.
- (4) Subsection (2) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).
- (5) In this section “the relevant income” has the meaning given by section 99(2).

#### <sup>F62</sup>102 Interpreting sections 99 to 101 for life assurance or gross roll-up business

.....

#### Textual Amendments

**F62** S. 102 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 239](#)

#### 103 Interpreting sections 99 to 101 <sup>F63</sup>...

- (1) This section has effect for the interpretation of sections 99 to 101 <sup>F64</sup>...
- (2) The “total income” of the category of business concerned for any period of account is the amount (if any) by which—
  - (a) the sum of the amounts specified in subsection (3), exceeds—
  - (b) the sum of the amounts specified in subsection (4).
- (3) The amounts mentioned in subsection (2)(a) are—
  - (a) earned premiums, net of reinsurance,
  - (b) investment income and gains, and
  - (c) other technical income, net of reinsurance.
- (4) The amounts mentioned in subsection (2)(b) are—
  - (a) acquisition costs,
  - (b) the change in deferred acquisition costs, and

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- (c) losses on investments.
- (5) The “total relevant expenses” of the category of business concerned for any period of account is the sum of—
- (a) the claims incurred, net of reinsurance,
  - (b) the changes in other technical provisions, net of reinsurance,
  - (c) the change in the equalisation provision, and
  - (d) investment management expenses,
- unless that sum is a negative amount, in which case the total relevant expenses is to be taken to be nil.
- (6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) are the amounts taken into account for the purposes of corporation tax.
- (7) Expressions used—
- (a) in the paragraphs of subsections (3) to (5), and
  - (b) in the provisions of section B of Part 1 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) which relate to the profit and loss account format (within the meaning of paragraph 1(1) and (2) of that Schedule),
- have the same meaning in those paragraphs as they have in those provisions.

#### Textual Amendments

**F63** Words in s. 103 heading omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 240\(3\)](#)

**F64** Words in s. 103(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 240\(2\)](#)

#### 104 Interpreting sections 100 and 101: amounts referable to category of business

- (1) This section applies for the purposes of the operation of sections 100 and 101 in relation to any income or gain in respect of which credit is to be allowed under any double taxation arrangements or under unilateral relief arrangements for a territory outside the United Kingdom.
- (2) The amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction found under subsection (3).
- (3) Apply sections 97 and [<sup>F65</sup>97A] in relation to—
- (a) that category of business,
  - (b) the income or gain, and
  - (c) the double taxation arrangements, or unilateral relief arrangements, mentioned in subsection (1),
- in order to find the fraction of the foreign tax that is attributable to that category of business.

#### Textual Amendments

**F65** Word in s. 104(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 241](#)

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## CHAPTER 3

### MISCELLANEOUS PROVISIONS

#### *Application of Part for capital gains tax purposes*

#### **105 Meaning of “chargeable gain”**

In this Part so far as it relates to capital gains tax “chargeable gain” has the same meaning as in TCGA 1992 (see, in particular, section 15(2) of that Act).

#### **106 Chapters 1 and 2 apply to capital gains tax separately from other taxes**

- (1) Subsection (2) applies if foreign gains tax may be brought into account under Chapters 1 and 2 so far as they apply for capital gains tax purposes.
- (2) The foreign gains tax is not to be taken into account under those Chapters so far as they apply otherwise than for capital gains tax purposes.
- (3) Subsection (2) applies whether or not relief in respect of the foreign gains tax is given under those Chapters so far as they apply for capital gains tax purposes.
- (4) Foreign non-gains tax is not to be taken into account under those Chapters so far as they apply for capital gains tax purposes.
- (5) In this section—
  - “foreign gains tax” means any tax which—
    - (a) is imposed by the law of a territory outside the United Kingdom, and
    - (b) is of a similar character to capital gains tax, and
  - “foreign non-gains tax” means tax which—
    - (a) is imposed by the law of a territory outside the United Kingdom, and
    - (b) is not foreign gains tax.

#### *When foreign tax disregarded in applying Part for corporation tax purposes*

#### **107 Disregard of foreign tax referable to derivative contract**

- (1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).
- (2) Tax is within this subsection in relation to a company so far as the tax—
  - (a) is tax under the law of a territory outside the United Kingdom, and
  - (b) is attributable, on a just and reasonable apportionment, to so much of a notional interest payment as, on such an apportionment, is attributable to a time when the company is not a party to the derivative contract concerned.
- (3) For the purposes of this section, a payment is a “notional interest payment” if—
  - (a) a derivative contract specifies—
    - (i) a notional principal amount,
    - (ii) a period, and
    - (iii) a rate of interest,

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- (b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and
- (c) the value of the rate is the same at all times as that of the specified rate of interest.

### **108 Disregard of foreign tax attributable to interest under a loan relationship**

- (1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).
- (2) Tax is within this subsection in relation to a company so far as the tax—
  - (a) is tax under the law of a territory outside the United Kingdom, and
  - (b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.
- (3) Tax within subsection (2) is not to be disregarded under subsection (1) if the tax is also within section 109 or 110.

### **109 Repo cases in which no disregard under section 108**

- (1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—
  - (a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial sale under or in accordance with any debtor repo relating to the relationship, and
  - (b) that time is in the period for which the repo has effect.
- (2) In this section—
  - “debtor repo” has the meaning given by the repo-definition section,
  - “the initial sale”, in relation to a debtor repo, means the sale mentioned in condition C in the repo-definition section, and
  - “the repo-definition section” means section 548 of CTA 2009.
- (3) In this section, a reference to the period for which a debtor repo has effect is to the period from the making of the initial sale until the earlier of—
  - (a) the time when the subsequent purchase mentioned in condition D in the repo-definition section takes place, and
  - (b) the time when it becomes apparent that that subsequent purchase will not take place.

### **110 Stock-lending cases in which no disregard under section 108**

- (1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—
  - (a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial transfer under or in accordance with any stock lending arrangement relating to that relationship, and
  - (b) that time is in the period for which the arrangement has effect.
- (2) In this section—

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“the initial transfer”, in relation to a stock lending arrangement, means the transfer mentioned in section 263B(1)(a) of TCGA 1992, and

“stock lending arrangement” has the meaning given by section 263B of TCGA 1992.

- (3) In this section, a reference to the period for which a stock lending arrangement has effect is to the period from the making of the initial transfer until the earlier of—
- (a) the time when the transfer mentioned in section 263B(1)(b) of TCGA 1992 takes place, and
  - (b) the time when it becomes apparent that that transfer will not take place.

### *Special rules for discretionary trusts*

## **111 When payment to beneficiary treated as arising from foreign source**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that a payment is made by trustees of a settlement.
- (3) Condition B is that income tax is treated under section 494 of ITA 2007 (treatment of discretionary payments by trustees) as having been paid in relation to the payment.
- (4) Condition C is that the income arising under the settlement includes taxed overseas income.
- (5) Condition D is that the trustees certify—
  - (a) that the payment is one made out of income consisting of, or including, taxed overseas income of an amount, and from a source, stated in the certificate, and
  - (b) that that amount of taxed overseas income arose to the trustees not earlier than 6 years before the end of the tax year in which the payment is made.
- (6) The person to whom the payment is made may claim that the payment, up to the certified amount, is to be treated for the purposes of this Part as income received by the person—
  - (a) from the certified source, and
  - (b) in the tax year in which the payment is made.
- (7) In this section “taxed overseas income”, in relation to a settlement, means income in respect of which the trustees are entitled to credit under this Part for tax under the law of a territory outside the United Kingdom.

### *Deduction for foreign tax where no credit allowed*

## **112 Deduction from income for foreign tax (instead of credit against UK tax)**

- (1) The amount of any income arising in any place outside the United Kingdom is reduced for the purposes of the Tax Acts—
  - (a) by any amount which has been paid in respect of non-UK tax on that income in the place where the income arose, or
  - (b) if subsection (2) applies, by the lesser amount mentioned in that subsection.

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- (2) This subsection applies if credit would, were it allowable in respect of the income, be reduced under section 39 (reduction by reference to accrued income losses) to the lesser amount given by section 39(5).
- [<sup>F66</sup>(2A) But if X is less than Y, an amount equal to the difference between X and Y must be subtracted from the amount by which any income of a person (“the relevant income”) is reduced under subsection (1)(a).

(2B) In subsection (2A)—

X is the amount of the relevant income that the person would (disregarding this section) be required to bring into account for income tax or corporation tax purposes, less any deduction that the person would be allowed to make for the amount paid in respect of non-UK tax, and

Y is the amount of the relevant income (that is to say, the amount on which the amount in respect of non-UK tax is paid.)]

(3) If—

(a) income of any person (“P”) is reduced under subsection (1) by an amount paid in respect of tax on that income in the place where the income arose, and

[<sup>F67</sup>(b) a tax authority makes a payment by reference to that tax, and that payment—  
 (i) is made to P or a person connected with P, or  
 (ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into,]

the amount of P's income is increased by the amount of the payment.

[<sup>F68</sup>(3A) Subsection (3B) applies if—

- (a) the requirements of section 49A(1)(a) to (c) are met,  
 (b) amounts have been paid in respect of non-UK tax on loan relationship credits falling within section 49A(1)(c) which arise in an accounting period of the relevant UK company, and  
 (c) apart from subsection (3B), Z would exceed

$$R \times S$$

where—

Z is—

- i the total amount of any reductions under subsection (1) for amounts paid in respect of that non-UK tax, less  
 ii the total amount of any increases under subsection (3) for payments made by reference to that non-UK tax, and  
 c R and S have the same meaning as in section 49A(2).

R and S have the same meaning as in section 49A(2).

(3B) The total amount of the reductions under subsection (1) is to be reduced so that Z equals]

$$R \times S$$

(4) Subsection (1)—

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- (a) has effect subject to section 31(2)(a) (no deduction for foreign tax if credit allowed and UK tax calculated otherwise than by reference to the amount received in the United Kingdom),
  - [<sup>F69</sup>(aa) has effect subject to section 71B(2) (reduction of foreign tax paid on profits of overseas permanent establishment),]
  - (b) has effect subject to section 143(5) and (6) (no deduction for special withholding tax if UK tax calculated otherwise than by reference to the amount received in the United Kingdom),
  - (c) does not apply to income the tax on which is to be calculated by reference to the amount of income received in the United Kingdom, and
  - (d) does not require any income to be reduced by an amount of underlying tax which, under section 60(3), is to be left out of account for the purposes of section 57.
- (5) Subsection (1) has effect for corporation tax purposes despite—
- (a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and
  - (b) section 906(1) of that Act (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).
- (6) In [<sup>F70</sup>this section] “non-UK tax” means tax under the law of a territory outside the United Kingdom.
- (7) For the purposes of subsection (3), whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.
- [<sup>F71</sup>(8) In subsection (3)(b)(ii) “scheme” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.]

**Textual Amendments**

- F66** S. 112(2A)(2B) inserted (with effect in accordance with Sch. 11 para. 7(2) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 7\(1\)](#)
- F67** S. 112(3)(b) substituted (with effect in accordance with s. 292(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 292\(4\)](#)
- F68** S. 112(3A)(3B) inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 14\(2\), 21](#)
- F69** S. 112(4)(aa) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [s. 30\(4\)](#)
- F70** Words in s. 112(6) substituted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 14\(3\), 21](#)
- F71** S. 112(8) inserted (with effect in accordance with s. 292(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 292\(5\)](#)

**113 Deduction from capital gain for foreign tax (instead of credit against UK tax)**

- (1) Subsection (2) applies to tax if it is—
- (a) chargeable under the law of any territory outside the United Kingdom on the disposal of an asset, and
  - (b) borne by the person making the disposal.
- (2) The tax is allowable as a deduction in the calculation of the gain.

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- (3) Subsection (2) is subject to—
- (a) Chapters 1 and 2 so far as they apply for corporation tax purposes (see, in particular, section 31),
  - (b) Chapters 1 and 2 so far as they apply for capital gains tax purposes (see, in particular, section 31), and
  - (c) section 143 (which includes provision about taking account of special withholding tax when calculating a gain for capital gains tax purposes).
- (4) In subsection (1) “asset” and “disposal” have the same meaning as in TCGA 1992 (see, in particular, section 21 and the following provisions of TCGA 1992).

#### **114 Time limits for action if tax adjustment makes reduction too large or too small**

- (1) Subsection (2) applies to a claim or assessment if—
- (a) the amount of any reduction under section 112(1) or 113(2) becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any territory outside the United Kingdom, or a person's income is increased under section 112(3),
  - (b) the adjustment or increase gives rise to the claim or assessment, and
  - (c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.
- (2) No time-limit rule applies to the assessment or claim.
- (3) In subsection (1)(c) “material determination” means (as the case may be)—
- (a) an assessment, adjustment, increase or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 112(1) or increase is to be made under section 112(3), or
  - (b) an assessment, adjustment or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 113(2).
- (4) In subsection (2) “time-limit rule” means anything—
- (a) in TMA 1970,
  - (b) in ICTA,
  - (c) in TCGA 1992, or
  - (d) in any other provision of the Tax Acts,
- limiting the time for the making of assessments or limiting the time for the making of claims for relief.

#### **115 Duty to give notice that adjustment has rendered reduction too large**

- (1) This section applies if—
- (a) the amount of any of a person's income is reduced under section 112(1),
  - (b) that reduction (“the original reduction”) later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom or an increase under section 112(3), and
  - (c) the adjustment or increase is not a Lloyd's adjustment.
- (2) This section also applies if—



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- (a) a deduction is allowed under section 113(2) in the case of a person making a disposal, and
  - (b) that deduction (“the original reduction”) later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom.
- (3) The person must give notice that the original reduction has become excessive as a result of the making of an adjustment or increase.
- (4) Notice under subsection (3) is to be given—
- (a) to an officer of Revenue and Customs, and
  - (b) within one year from when the adjustment or increase was made.
- (5) If the person fails to comply with the requirements imposed by subsections (3) and (4), the person is liable to a penalty not greater than the amount given by—

$$A - B$$

where—

A is the amount of tax payable by the person for the reduction period after giving effect to the reduction that ought to be made under section 112(1) or (as the case may be) under section 113(2), and

B is the amount that would have been the tax payable by the person for that period after giving effect instead to the original reduction.

- (6) In subsection (5) “the reduction period” means the tax year, or accounting period of a company for corporation tax purposes, for which the original reduction was made.
- (7) For the purposes of subsection (1)(c), the adjustment or increase is a “Lloyd’s adjustment” if the consequences of the adjustment or increase in relation to the reduction are to be given effect in accordance with regulations under—
- (a) section 182(1) of FA 1993 (regulations about individual members of Lloyd’s), or
  - (b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd’s).
- (8) In subsection (2) “disposal” has the same meaning as in TCGA 1992 (see, in particular, section 21(2) and the following provisions of TCGA 1992).
- (9) In this section so far as it relates to capital gains tax “notice” means notice in writing.

### *European cross-border transfers of business*

## **116 Introduction to section 117**

- (1) Subject to subsections (4) to (6), section 117 applies if condition A or B is met.
- (2) Condition A is that—
- (a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and
  - (b) the transfer includes—
    - (i) the transfer of an asset or liability representing a loan relationship,
    - (ii) the transfer of rights and liabilities under a derivative contract, or

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- (iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.
- (3) Condition B is that—
- (a) a company resident in the United Kingdom transfers part of its business to one or more companies,
  - (b) the part of the transferor's business which is transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,
  - (c) at least one transferee is resident in a member State other than the United Kingdom,
  - (d) the transferor continues to carry on a business after the transfer,
  - (e) the condition in subsection (2)(b) is met, and
  - (f) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 117—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one.
- (5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 117—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one, and
  - (c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.
- (6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 117—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—

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- (i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a member State, and
    - (ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—
    - (i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and
    - (ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and
  - (c) only applies as respects the transfer so mentioned if—
    - (i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and
    - (ii) the transferor makes a claim under this section in respect of the transfer so mentioned.
- (7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).
- (8) For the purposes of this section, a company is resident in a member State if—
  - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

#### **117 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets**

- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—
  - (a) that, to the extent permitted by the law of the other member State, losses arising on the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and
  - (b) that any relief due to the transferor under that law is claimed.
- (3) Subsection (1) does not apply if—
  - (a) the transfer of business mentioned in section 116(2)(a) or (3)(a) is not effected for genuine commercial reasons, or
  - (b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—

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- (a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.
- (5) In subsection (4) “the appropriate applicant” means—
- (a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(i) or (ii) is concerned, the companies mentioned in section 116(2)(a) or (3)(a), and
  - (b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(iii) is concerned, the transferor.
- (6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

### *European cross-border mergers*

#### <sup>F72</sup>**118 Introduction to section 119**

- (1) Section 119 applies if each of conditions A to E is met and—
- (a) in the case of a merger within subsection (2)(a) or (b), condition F is met,
  - (b) in the case of a merger within subsection (2)(c), conditions F and G are met, and
  - (c) in the case of a merger within subsection (2)(d), condition G is met.
- (2) Condition A is that—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - <sup>F73</sup>(b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a [<sup>F74</sup>registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969], in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (3) Condition B is that each merging company is resident in a member State.
- (4) Condition C is that the merging companies are not all resident in the same State.
- (5) Condition D is that in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member

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State other than the United Kingdom through a permanent establishment (but see subsection (9)).

- (6) Condition E is that the transfer mentioned in subsection (5) includes—
- (a) the transfer of an asset or liability representing a loan relationship,
  - (b) the transfer of rights and liabilities under a derivative contract, or
  - (c) the transfer of intangible fixed assets—
    - (i) that are chargeable intangible assets in relation to company A immediately before the transfer, and
    - (ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.
- (7) Condition F is that—
- (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).
- (9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 119 applies in respect of such a transfer as is mentioned in subsection (6)(c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).
- (10) For the purposes of this section, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (11) In this section—
- “co-operative society” means a [F75]registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969] or a similar society governed by the law of a member State other than the United Kingdom,
- “SE” and “SCE” have the same meaning as in CTA 2009 (see section 1319 of that Act),
- “the transferee” means—
- (a) in relation to a merger within subsection (2)(a), the SE,
  - (b) in relation to a merger within subsection (2)(b), the SCE, and
  - (c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and
- “transferor” means—

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- (a) in relation to a merger within subsection (2)(a), a company merging to form the SE,
- (b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and
- (c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.

#### Textual Amendments

- F72** S. 118(11) amendment to earlier affecting provision 2014 c. 14 Sch. 4 para. 171(3) (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 14\(b\)](#), 15
- F73** S. 118(2)(b) amendment to earlier affecting provision 2014 c. 14 Sch. 4 para. 171(2) (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 14\(a\)](#), 15
- F74** Words in s. 118(2)(b) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 171\(2\)](#) (with [Sch. 5](#)) (as amended by 2014 c. 26, Sch. 39 paras. 14(a), 15)
- F75** Words in s. 118(11) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 171\(3\)](#) (with [Sch. 5](#)) (as amended by 2014 c. 26, Sch. 39 paras. 14(b), 15)

#### 119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—
  - (a) that, to the extent permitted by the law of the other member State, losses arising on that transfer are set against gains arising on that transfer, and
  - (b) that any relief due to company A under that law is claimed.
- (3) Subsection (1) does not apply if—
  - (a) the merger is not effected for genuine commercial reasons, or
  - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (4) But subsection (3) does not prevent subsection (1) from applying if before the merger—
  - (a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.
- (5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

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- (6) In this section “company A”, “the merger” and “the merging companies” have the same meaning as in section 118.

*Transparent entities involved in cross-border transfers and mergers*

**120 Introduction to section 121**

- (1) Section 121 applies if, as a result of—
- (a) a relevant loan relationship transaction,
  - (b) a relevant derivative contracts transaction, or
  - (c) a relevant intangible fixed assets transaction,
- tax would have been chargeable under the law of a member State other than the United Kingdom in respect of a relevant profit but for the Mergers Directive.
- (2) In this section “relevant loan relationship transaction” means—
- (a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—
    - (i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) the condition in section 421(3)(c) or (4)(f) of that Act were met,and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or
  - (b) a merger of a kind mentioned in section 431(2) of that Act which meets—
    - (i) conditions B to D in section 431,
    - (ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and
    - (iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,and in relation to which one or more of the merging companies is a transparent entity.
- (3) In this section “relevant derivative contracts transaction” means—
- (a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—
    - (i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) the condition in section 674(2)(c) or (3)(f) of that Act were met,and in relation to which the transferor is a transparent entity, or
  - (b) a merger of a kind mentioned in section 682(2) of that Act which meets—
    - (i) conditions B to D in section 682,
    - (ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and
    - (iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,and in relation to which one or more of the merging companies is a transparent entity.
- (4) In this section “relevant intangible fixed assets transaction” means—

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- (a) a transfer—
    - (i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or
  - (b) a merger—
    - (i) which is of a kind mentioned in section 821(2) of that Act,
    - (ii) which meets conditions B and C in section 821,
    - (iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,
    - (iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,
    - (v) in the course of which no qualifying assets are transferred to which section 818 of that Act (company reconstruction involving transfer of business) applies, and
    - (vi) in relation to which one or more of the merging companies is a transparent entity.
- (5) In this section “relevant profit” means—
- (a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,
  - (b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,
  - (c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,
  - (d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to another company in the course of the merger,
  - (e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent, and
  - (f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.



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- (6) In this section “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

## **121 Tax treated as chargeable in respect of relevant transactions**

- (1) This Part applies, and any double taxation arrangements apply, as if the tax that would have been chargeable as mentioned in section 120(1) had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—
- (a) that, to the extent permitted by the law of the other member State mentioned in section 120(1), losses arising on the relevant transfer are set against profits arising on it, and
  - (b) that any relief available under that law is claimed.
- (3) In this section “the relevant transfer” means—
- (a) the transfer of assets or liabilities mentioned in section 120(5)(a) or (b),
  - (b) the transfer of rights and liabilities mentioned in section 120(5)(c) or (d), or
  - (c) the transfer of intangible fixed assets mentioned in section 120(5)(e) or (f).

*Cross-border transfers and mergers: chargeable gains*

## **122 Tax treated as chargeable in respect of gains on transfer of non-UK business**

- (1) Subsection (3) applies if—
- (a) section 140C or 140F of TCGA 1992 applies, and
  - (b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.
- (2) In this section—
- “company A”—
- (a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and
  - (b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,
- “the host State” means the member State (other than the United Kingdom) mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,
- “the transfer” means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and
- “the transfer subsections” means—
- (a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident “company” to one resident in another member State),
  - (b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident “company” to transferees including a “company” resident in another member State), and
  - (c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident “company” or co-operative society to one resident in another member State, as part of genuine merger of two or more “companies” or societies).

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- (3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.
- (4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.
- (5) For the purposes of subsection (4) “the required basis” is that—
  - (a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and
  - (b) any relief available to company A under the law of the host State has been duly claimed.

*Interpretation of sections related to the Mergers Directive*

## 123 Interpretation of sections 116 to 122

In sections 116 to 122 and this section—

“company” means any entity listed as a company in [<sup>F76</sup>Part A of Annex I] to the Mergers Directive,

“derivative contract” has the same meaning as in Part 7 of CTA 2009,

“intangible fixed assets” and “chargeable intangible assets”, in relation to any person, have the same meaning as in Part 8 of CTA 2009,

“loan relationship” has the same meaning as in Part 5 of CTA 2009,

“the Mergers Directive” means Council Directive [<sup>F77</sup>2009/133/EC,]

“proceeds of realisation”, in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and

“recognised for tax purposes” has the same meaning as in Part 8 of CTA 2009.

### Textual Amendments

**F76** Words in s. 123 substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **5(a)**

**F77** Words in s. 123 substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **5(b)**

### *Cases about being taxed otherwise than in accordance with double taxation arrangements*

## 124 Giving effect to solutions to cases and mutual agreements resolving cases

- (1) Subsections (2) and (4) apply if under, and for the purposes of, double taxation arrangements made in relation to a territory outside the United Kingdom—
  - (a) a person presents, to the Commissioners for Her Majesty's Revenue and Customs or to an authority in the territory, a case concerning the person's being taxed (whether in the United Kingdom or the territory) otherwise than in accordance with the arrangements, and
  - (b) the Commissioners arrive at a solution to the case or make a mutual agreement with an authority in the territory for the resolution of the case.

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- (2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.
- (3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.
- (4) A claim for relief under any provision of—
  - (a) the Tax Acts,
  - (b) the enactments relating to capital gains tax, or
  - (c) the enactments relating to petroleum revenue tax,
 may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the person affected, even if that involves making the claim after a deadline imposed by another enactment.

## **125 Effect of, and deadline for, presenting a case**

- (1) This section applies if double taxation arrangements include provision for a person to present a case—
  - (a) to the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) to an officer of Revenue and Customs,
 concerning the person's being taxed otherwise than in accordance with the arrangements.
- (2) The presentation of any such case under and in accordance with the arrangements—
  - (a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and
  - (b) is accordingly not subject to section 42 of TMA 1970 or any other enactment relating to the making of such claims.
- (3) Any such case must be presented before the end of—
  - (a) the period of 6 years following the end of the chargeable period to which the case relates, or
  - (b) such longer period as may be specified in the arrangements.

### *The Arbitration Convention*

## **126 Meaning of “the Arbitration Convention”**

In sections 127 and 128 “the Arbitration Convention” means the Convention, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23 July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).

## **127 Giving effect to agreements, decisions and opinions under the Convention**

- (1) In this section “Convention determination” means—

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- (a) an agreement or decision, made under the Arbitration Convention by the Commissioners for Her Majesty's Revenue and Customs (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
  - (b) an opinion, delivered by an advisory commission set up under the Arbitration Convention, on the elimination of double taxation.
- (2) Subsection (3) applies if the Arbitration Convention requires the Commissioners to give effect to a Convention determination.
- (3) The Commissioners are to give effect to the Convention determination despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.
- (4) An adjustment under subsection (3) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.
- (5) An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

## 128 Disclosure under the Convention

- (1) The obligation as to secrecy imposed by any enactment does not prevent—
- (a) the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) any authorised Revenue and Customs official,
- from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under the Convention.
- (2) In this section “Revenue and Customs official” means any person who is or was—
- (a) a Commissioner for Her Majesty's Revenue and Customs,
  - (b) an officer of Revenue and Customs,
  - (c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
  - (d) a person acting on behalf of an officer of Revenue and Customs, or
  - (e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

*[<sup>F78</sup>International dispute-resolution instruments and agreements*

### Textual Amendments

**F78** Ss. 128A-128C and cross-heading inserted (12.2.2019) by [Finance Act 2019 \(c. 1\), s. 83](#)

## 128A Power by regulations to give effect to international obligations etc

- (1) The Treasury may make regulations for, or in connection with, giving effect to or enabling effect to be given to—

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- (a) [Council Directive \(EU\) 2017/1852](#) of 10 October 2017 on tax dispute resolution mechanisms in the European Union (“the Directive”);
  - (b) any instrument modifying or supplementing the Directive;
  - (c) any international agreements or arrangements that deal with—
    - (i) matters dealt with by the Directive,
    - (ii) matters that are similar to any of those dealt with by the Directive, or
    - (iii) any other matters that relate to or are connected with the resolution of disputes in relation to double taxation arrangements.
- (2) The provision that may be made by regulations under this section includes (in particular)—
- (a) provision as to the effect of any arrangements that the Commissioners for Her Majesty’s Revenue and Customs may make with authorities of territories outside the United Kingdom;
  - (b) provision conferring or imposing functions, rights or obligations, or authorising the conferral or imposition of functions, rights or obligations, on a person (including a commission, tribunal or court);
  - (c) provision under which the Commissioners or other persons may exercise discretions;
  - (d) provision about procedure in relation to the resolution of disputes;
  - (e) provision about costs, expenses and fees;
  - (f) provision imposing penalties or creating criminal offences;
  - (g) provision about appeals;
  - (h) provision about the form and manner in which, or time within which, things are to be done;
  - (i) provision supplementing section 128B.
- (3) The regulations may—
- (a) make provision having effect in relation to periods before the regulations come into force;
  - (b) make provision by reference to an instrument or document as it has effect from time to time;
  - (c) make provision about things done, or to be done, in territories outside the United Kingdom;
  - (d) make different provision for different purposes;
  - (e) make consequential, incidental, supplemental, transitional, transitory or saving provision;
  - (f) make provision amending, repealing, revoking or disapplying, or modifying the effect of, any enactment (whenever passed or made).
- (4) The regulations may not create a criminal offence punishable on indictment with imprisonment for more than two years.
- (5) Regulations under this section containing anything that amends or repeals a provision of primary legislation may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the House of Commons.
- In this subsection “primary legislation” means—
- (a) an Act,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or

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(d) Northern Ireland legislation.

(6) In subsections (2) and (3) and sections 128B and 128C, a reference to a commission, tribunal, court or other person includes a reference to a commission, tribunal, court or other person in a territory outside the United Kingdom.

### **128B Giving effect to requirements under section 128A regulations**

- (1) Subsection (2) applies if anything in regulations under section 128A requires the Commissioners for Her Majesty’s Revenue and Customs to give effect to an agreement, decision or opinion made or given by—
- (a) the Commissioners (or their authorised representative),
  - (b) the competent authority of a territory outside the United Kingdom, or
  - (c) any commission, tribunal, court or other person.
- (2) The Commissioners are to give effect to the agreement, decision or opinion despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.
- (3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

### **128C Disclosure under international obligations etc**

- (1) The obligation as to secrecy imposed by any enactment does not prevent—
- (a) the Commissioners for Her Majesty’s Revenue and Customs,
  - (b) a person who is or was an authorised Revenue and Customs official,
  - (c) a person who is or was a member of a committee or other body established by the Commissioners for Her Majesty’s Revenue and Customs (or jointly by the Commissioners and an authority of a territory outside the United Kingdom), or
  - (d) a person specified, or of a description specified, in regulations made by the Treasury,
- from disclosing information required to be disclosed under a relevant instrument or agreement in pursuance of a request made by any person.
- (2) In this section—
- “relevant instrument or agreement” means an instrument, agreement or arrangement referred to, or of a kind referred to, in section 128A(1);
- “Revenue and Customs official” means—
- (a) a Commissioner for Her Majesty’s Revenue and Customs;
  - (b) an officer of Revenue and Customs;
  - (c) a person acting on behalf of the Commissioners for Her Majesty’s Revenue and Customs;
  - (d) a person acting on behalf of an officer of Revenue and Customs.]

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### *Disclosure of information*

#### **129 Disclosure where relief given overseas for tax paid in the United Kingdom**

- (1) Subsection (2) applies if the law of a territory outside the United Kingdom makes provision allowing, in respect of the payment of—
  - (a) income tax,
  - (b) corporation tax,
  - (c) capital gains tax, or
  - (d) petroleum revenue tax,relief from tax payable under that law.
- (2) The obligation as to secrecy imposed upon Revenue and Customs officials by—
  - (a) the Tax Acts,
  - (b) the enactments relating to capital gains tax, and
  - (c) the enactments relating to petroleum revenue tax,does not prevent disclosure, to the authorised officer of the authorities of the territory, of such facts as may be necessary to enable the proper relief to be given under the law of the territory.
- (3) The reference in subsection (1) to tax payable under the law of the territory includes only—
  - (a) taxes which are charged on income and which correspond to income tax,
  - (b) taxes which are charged on income or chargeable gains and which correspond to corporation tax,
  - (c) taxes which are charged on capital gains and which correspond to capital gains tax, and
  - (d) taxes which—
    - (i) are charged on amounts corresponding to amounts on which petroleum revenue tax is charged, and
    - (ii) correspond to petroleum revenue tax.
- (4) For the purposes of subsection (3), tax may correspond to income tax, corporation tax, capital gains tax or petroleum revenue tax even though it—
  - (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.
- (5) In this section “Revenue and Customs official” means any person who is or was—
  - (a) a Commissioner for Her Majesty's Revenue and Customs,
  - (b) an officer of Revenue and Customs,
  - (c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
  - (d) a person acting on behalf of an officer of Revenue and Customs, or
  - (e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

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### *Interpretation of double taxation arrangements*

#### **130 Interpreting provision about UK taxation of profits of foreign enterprises**

- (1) Subsection (4) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).
- (2) The provision is that the profits of an enterprise within subsection (3) are not to be subject to United Kingdom tax except so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.
- (3) An enterprise is within this subsection if the enterprise—
  - (a) is resident outside the United Kingdom, or
  - (b) carries on a trade, or profession or business, the control or management of which is situated outside the United Kingdom.
- (4) The provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.
- (5) Subsection (4)—
  - (a) does not apply in relation to income of a person resident in the United Kingdom if section 858 of ITTOIA 2005 (UK resident partner is taxable on share of firm's income despite any double taxation arrangements) applies to the income, and
  - (b) does not apply in relation to income of a company resident in the United Kingdom if section 1266(2) of CTA 2009 (UK resident company that is partner in a firm is taxable on share of firm's income despite any double taxation arrangements) applies to the income.
- (6) A person is resident in the United Kingdom for the purposes of this section if the person is resident in the United Kingdom for the purposes of the double taxation arrangements.

#### **[<sup>F79</sup>130A Interpreting provision about UK taxation of pensions etc**

- (1) Subsection (3) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).
- (2) The provision is that pensions and other similar remuneration which—
  - (a) arise outside the United Kingdom, and
  - (b) are paid to persons who are resident in the United Kingdom,
 are not to be subject to United Kingdom tax.
- (3) That provision does not prevent a pension or other similar remuneration of a person resident in the United Kingdom being chargeable to income tax if—
  - (a) the pension or other similar remuneration is paid out of sums or assets that were the subject of a relevant transfer or related sums or assets, and
  - (b) the relevant transfer or any transaction forming part of that transfer was, or formed part of, a tax avoidance scheme.
- (4) But nothing in subsection (3) prevents credit being allowed under Chapter 2 of this Part (double taxation relief by way of credit) against any tax so charged.



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- (5) In determining whether a pension or other similar remuneration is paid out of sums or assets within subsection (3)(a), it is to be assumed that it is paid out of such sums or assets in priority to any other sums or assets.
- (6) A “relevant transfer”, in respect of any sums or assets, is a transaction or series of transactions as a result of which—
- (a) the sums or assets are transferred out of a pension scheme, and
  - (b) the sums or assets or related sums or assets (or both) are transferred into the pension scheme under which the pension or other similar remuneration is paid.
- (7) A scheme is a “tax avoidance scheme” if the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure an income tax advantage for any person under this Part by virtue of provision mentioned in subsection (2) made by double taxation arrangements.
- (8) For the purposes of subsection (7)—
- (a) “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions,
  - (b) it does not matter whether or not the double taxation arrangements were in existence at the time the tax avoidance scheme was entered into or given effect to, and
  - (c) “income tax advantage” is to be construed in accordance with section 572A(3) to (5) of ITA 2007.
- (9) In this section—
- “pension” and “other similar remuneration” have the same meaning as in the Model Tax Convention on Income and on Capital published (from time to time) by the Organisation for Economic Co-operation and Development;
- “pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150 of that Act);
- “related sums or assets”, in relation to other sums or assets (“the original sums or assets”), means sums or assets which arise, or (directly or indirectly) derive, from the original sums or assets or from sums or assets which so arise or derive.]

#### Textual Amendments

**F79** S. 130A inserted (with effect in accordance with s. 72(2) of the amending Act) by [Finance Act 2011](#) (c. 11), s. 72(1)

### 131 Interpreting provision about interest influenced by special relationship

- (1) Subsections (3) and (6) apply if double taxation arrangements—
- (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and
  - (b) contain a special relationship rule.
- (2) A “special relationship rule” is provision that—

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- (a) applies if the amount of the interest paid is, because of a special relationship, greater than the amount (“the ordinary amount”) that would have been paid in the absence of the relationship, and
  - (b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.
- (3) The special relationship rule is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the loan would have been made at all in the absence of the special relationship,
  - (b) the amount which the loan would have been in the absence of the special relationship, and
  - (c) the rate of interest, and the other terms, which would have been agreed in the absence of the special relationship.
- (4) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the debt on which interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).
- (5) If—
- (a) a company (“L”) makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of L's business to make loans generally,
- the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (3).
- (6) The special relationship rule is to be read as requiring the taxpayer—
- (a) to show that there is no special relationship, or
  - (b) if there is a special relationship, to show the amount of interest that would have been paid in the absence of the relationship.

### **132 Interpreting provision about royalties influenced by special relationship**

- (1) Subsection (3) and section 133 apply if double taxation arrangements—
- (a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and
  - (b) contain a special relationship rule.
- (2) A “special relationship rule” is provision that—
- (a) applies if the amount of the royalties paid is, because of a special relationship, greater than the amount (“the ordinary amount”) that would have been paid in the absence of the relationship, and
  - (b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.
- (3) The special relationship rule is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the special relationship,
  - (b) the rate or amounts of royalties, and the other terms, which would have been agreed in the absence of the special relationship, and
  - (c) if subsection (4) applies, the factors specified in subsection (5).

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- (4) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—
- (a) the person (“PR”) who is liable to pay the royalties,
  - (b) a person who is, or has at any time been, an associate of PR,
  - (c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by PR, or
  - (d) a person who is, or has at any time been, an associate of a person within paragraph (c).
- (5) The factors mentioned in subsection (3)(c) are—
- (a) the amounts which were paid under the transaction, or under each of the transactions in a series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,
  - (b) the amounts which would have been paid under that transaction, or under each of those transactions, in the absence of a special relationship, and
  - (c) the question whether the transaction, or series of transactions, would have taken place in the absence of a special relationship.
- (6) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).
- (7) For the purposes of this section, a person (“A”) is an associate of another person (“B”) at a given time if—
- (a) A was directly or indirectly participating in the management, control or capital of B at that time, or
  - (b) the same person was, or the same persons were, directly or indirectly participating in the management, control or capital of A and B at that time.
- (8) For the interpretation of subsection (7), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (7) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

### **133 Special relationship rule for royalties: matters to be shown by taxpayer**

- (1) If this section applies (as to which, see section 132(1)), the special relationship rule is to be read as requiring the taxpayer to show—
- (a) the absence of any special relationship, or
  - (b) as the case may be, the rate or amounts of royalties that would have been payable in the absence of the special relationship.
- (2) The requirement under subsection (1)(a) includes whichever is applicable of the following requirements.
- (3) The first of those requirements is—
- (a) to show that no person of any of the descriptions in section 132(4)(a) to (d) has previously been the beneficial owner of the asset in respect of which the royalties are paid, and

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- (b) to show that no person of any of those descriptions has previously been the beneficial owner of any asset which that asset represents or from which it is derived.
- (4) The second of those requirements is—
- (a) to show that the transaction, or series of transactions, mentioned in section 132(5)(a) would have taken place in the absence of a special relationship, and
  - (b) to show the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of a special relationship.

### *Assessments*

## **134 Correcting assessments where relief is available**

- (1) Subsections (5) and (6) apply if—
  - (a) under double taxation arrangements, relief may be given in the United Kingdom, or in the territory in relation to which the arrangements are made, in respect of any income or any chargeable gain, and
  - (b) condition A or B is met.
- (2) Subsections (5) and (6) also apply if—
  - (a) under unilateral relief arrangements for a territory outside the United Kingdom, relief may be given in respect of any income or any chargeable gain, and
  - (b) condition A or B is met.
- (3) Condition A is that it appears that the assessment—
  - (a) to income tax or corporation tax made in respect of the income, or
  - (b) to corporation tax or capital gains tax made in respect of the gain,
 is not made in respect of the full amount of the income or gain.
- (4) Condition B is that it appears that the assessment—
  - (a) to income tax or corporation tax made in respect of the income, or
  - (b) to corporation tax or capital gains tax made in respect of the gain,
 is incorrect having regard to the credit, if any, to be given under the arrangements.
- (5) Assessments may be made that are necessary to ensure—
  - (a) that the full amount of the income or gain is assessed, and
  - (b) that the proper credit, if any, is given.
- (6) If the income is entrusted to any person in the United Kingdom for payment, an assessment under subsection (5) may be made on the recipient of the income.
- (7) An officer of Revenue and Customs may make amendments—
  - (a) of assessments or determinations, or
  - (b) of decisions on claims,
 that are necessary in consequence of Chapter 1 so far as it applies for petroleum revenue tax purposes.

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## PART 3

### DOUBLE TAXATION RELIEF FOR SPECIAL WITHHOLDING TAX

#### *Introductory*

#### **135 Relief under this Part: introductory**

- (1) This Part (except sections 144 and 145) applies for the purpose of giving relief from double taxation in respect of special withholding tax.
- (2) Relief under this Part—
  - (a) is given by set-off against income tax or capital gains tax, and
  - (b) so far as it cannot be given by set-off against income tax or capital gains tax, is given by repayment.

#### **136 Interpretation of Part**

- (1) Subsections (2) to (7) have effect for the purposes of this Part.
- (2) “Double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).
- (3) “International arrangements”, in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income—
  - (a) under the law of the United Kingdom, or
  - (b) under that law and the law of the territory.
- (4) “The Savings Directive” means Council Directive [2003/48/EC](#) of 3 June 2003 on taxation of savings income in the form of interest payments.
- (5) “Savings income”—
  - (a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression “interest payment” has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and
  - (b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned.
- (6) “Special withholding tax” means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—
  - (a) in the case of a member State, Article 11 of the Savings Directive (withholding tax to be levied in Belgium, Luxembourg and Austria for the period described in the Directive), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (7) In the application of this Part in relation to capital gains tax, expressions used in this Part and in TCGA 1992 have the same meaning in this Part as in TCGA 1992.

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*Credit etc for special withholding tax*

**137 Income tax credit etc for special withholding tax**

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person—
  - (a) is liable to income tax for a tax year in respect of a payment of savings income, or
  - (b) would be liable to income tax for a tax year in respect of a payment of savings income but for any exemption or relief.
- (3) Condition B is that special withholding tax is levied in respect of the payment.
- (4) Condition C is that the person is UK resident for the tax year.
- (5) On the making of a claim, income tax (“the deemed tax”) is to be treated as having been—
  - (a) paid by or on behalf of the person for the tax year, and
  - (b) deducted at source for the tax year for the purposes of the provisions listed in subsection (7).
- (6) The amount of the deemed tax is given by section 138.
- (7) The provisions mentioned in subsection (5)(b) are—
  - section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
  - section 8 of TMA 1970 (personal return),
  - section 8A of TMA 1970 (trustee’s return),
  - section 9 of TMA 1970 (returns to include self-assessment),
  - section 59A of TMA 1970 (payments on account of income tax),
  - section 59B of TMA 1970 (payments of income tax and capital gains tax), and
  - section 824(3) of ICTA (repayment supplements: determination of relevant time).

**138 Amount and application of the deemed tax under section 137**

- (1) For the purposes of section 137, the amount of the deemed tax is—
  - (a) the amount of the special withholding tax levied (see section 137(3)), less
  - (b) any amounts of that tax that are within subsection (2).
- (2) An amount of special withholding tax levied is within this subsection if—
  - (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 137(2).
- (3) Subsection (4) applies if the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for that tax year (before any set-off for the deemed tax).
- (4) So far as it would not otherwise be the case—

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- (a) the excess is to be set against any capital gains tax for which the person is liable for that tax year, and
- (b) the person is entitled to a repayment of income tax in respect of any remaining balance of the excess.

### **139 Capital gains tax credit etc for special withholding tax**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that a person makes a disposal of assets in a tax year.
- (3) Condition B is that if a chargeable gain were to accrue on the disposal—
  - (a) the gain would accrue to the person, and
  - (b) the person would be chargeable to capital gains tax in respect of the gain.
- (4) Condition C is that—
  - (a) the consideration for the disposal consists of, or includes, an amount of savings income, and
  - (b) special withholding tax is levied in respect of the whole, or any part, of the consideration.
- (5) Condition D is that the person is resident in the United Kingdom for the tax year.
- (6) On the making of a claim, capital gains tax (“the deemed tax”) is to be—
  - (a) treated as having been paid by or on behalf of the person for the tax year, and
  - (b) treated for the purposes of section 283(2) of TCGA 1992 (repayment supplements: determination of relevant time) as having been paid on the 31 January following the tax year.
- (7) The amount of the deemed tax is given by section 140.
- (8) For the purposes of subsection (3)(b), disregard—
  - (a) any deductions that are to be made from the total amount referred to in section 2(2) of TCGA 1992 (deductions for allowable losses), and
  - (b) section 3 of TCGA 1992 (annual exempt amount).

### **140 Provisions about the deemed tax under section 139**

- (1) For the purposes of section 139, the amount of the deemed tax is—
  - (a) the amount of the special withholding tax levied (see section 139(4)(b)), less
  - (b) any amounts of that tax that are within subsection (2) or (3).
- (2) An amount of special withholding tax levied is within this subsection if—
  - (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 139(2).
- (3) An amount of special withholding tax levied is within this subsection if by reference to that amount of that tax—
  - (a) there is that amount of deemed tax under section 137(5), or

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- (b) there would be that amount of deemed tax under section 137(5) on the making of a claim.
- (4) Subsection (5) applies if the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for that tax year (before any set-off for the deemed tax).
- (5) So far as it would not otherwise be the case—
  - (a) the excess is to be set against any income tax for which the person is liable for that tax year, and
  - (b) the person is entitled to a repayment of capital gains tax in respect of any remaining balance of the excess.
- (6) For the purposes of the provisions listed in subsection (7) in relation to the person for that tax year, references in those provisions to income tax deducted at source for that tax year include the deemed tax.
- (7) Those provisions are—
  - section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
  - section 8 of TMA 1970 (personal return),
  - section 8A of TMA 1970 (trustee's return),
  - section 9 of TMA 1970 (returns to include self-assessment), and
  - section 59B of TMA 1970 (payments of income tax and capital gains tax).

#### **141 Credit under Chapter 2 of Part 2 to be allowed first**

- (1) Any credit for foreign tax allowed under Chapter 2 of Part 2 against income tax or capital gains tax is to be allowed before effect is given to sections 137 to 140.
- (2) In this section “foreign tax” has the same meaning as in that Chapter (see section 21).

*Calculation of income or gain on remittance basis where special withholding tax levied*

#### **142 Conditions for purposes of section 143**

- (1) This section applies for the purposes of section 143.
- (2) Condition A is that—
  - (a) a person is liable to income tax in respect of a payment of savings income, or
  - (b) a chargeable gain accrues to a person on a disposal by the person of assets in circumstances where the consideration for the disposal consists of, or includes, an amount of savings income.
- (3) Condition B is that special withholding tax is levied in respect of—
  - (a) the payment of savings income, or
  - (b) the whole or any part of the consideration for the disposal.
- (4) Condition C is that a claim under this Part has been made in respect of the special withholding tax.
- (5) Condition D is that no credit for foreign tax in respect of the savings income or chargeable gain concerned is allowed under Chapter 2 of Part 2 (so that sections 31(2) and 32(2), which make provision similar to section 143, do not apply).



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### 143 Taking account of special withholding tax in calculating income or gains

- (1) Subsection (2) applies if—
  - (a) each of conditions A to D of section 142 is met, and
  - (b) income tax is payable by reference to the amount of the savings income received in the United Kingdom.
- (2) For income tax purposes, the amount received is increased by the amount of special withholding tax—
  - (a) levied in respect of it, and
  - (b) in respect of which a claim under this Part has been made.
- (3) Subsection (4) applies if—
  - (a) each of conditions A to D of section 142 is met, and
  - (b) capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom.

- (4) For capital gains tax purposes, the amount received is increased by the amount given by—

$$S W T \times \frac{G U K}{G - S W T}$$

where—

SWT is the amount of special withholding tax—

- (a) levied in respect of the whole or the part of the consideration for the disposal, and
  - (b) in respect of which a claim has been made under this Part,
- GUK is the amount of the chargeable gain received in the United Kingdom, and  
G is the amount of the chargeable gain accruing to the person on the disposal.

- (5) Subsection (6) applies if—
  - (a) each of conditions A to D of section 142 is met, and
  - (b) neither subsection (2) nor subsection (4) applies.
- (6) In calculating—
  - (a) the amount of the income for income tax purposes, or
  - (b) the amount of any chargeable gain for capital gains tax purposes,

no deduction is to be made for special withholding tax in respect of which a claim has been made under this Part (whether special withholding tax in respect of the same, or any other, income or in respect of the same, or any other, chargeable gains).

#### Modifications etc. (not altering text)

- C6 S. 143 applied (with modifications) (coming into force in accordance with s. 218(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 36 para. 16\(6\)](#)

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### *Certificates to avoid levy of special withholding tax*

#### **144 Issue of certificate**

- (1) This section enables officers of Revenue and Customs to issue certificates to be used under the law of a territory outside the United Kingdom implementing—
  - (a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to the paying agent a certificate drawn up by a competent authority in the beneficial owner's member State of residence for tax purposes), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (2) If, on the written application of a person, an officer is satisfied that the applicant has provided an officer with—
  - (a) the required information, and
  - (b) the documents (if any) required by an officer to verify that information,
 an officer must issue a certificate to the applicant.
- (3) In subsection (2) “the required information” means—
  - (a) the applicant's name and address,
  - (b) the applicant's National Insurance number or, if the applicant does not have one, the applicant's date, town and country of birth,
  - (c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to payments of savings income,
  - (d) the name and address of the paying agent who is to make the payments of savings income to, or to secure the payments of savings income for, the applicant, and
  - (e) the period, not exceeding 3 years, for which the applicant would like the certificate to be valid.
- (4) A certificate under this section must be in writing and must state—
  - (a) the information mentioned in subsection (3)(a) to (d), and
  - (b) the period of validity of the certificate (which must not exceed 3 years).
- (5) A certificate under this section must be issued no later than the end of the period of 2 months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).
- (6) If the requirements of—
  - (a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and
  - (b) any corresponding provision of any international arrangements,
 differ to any extent, subsections (3) to (5) have effect, in their application in relation to the international arrangements, with such modifications as may be required because of those arrangements.

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## 145 Refusal to issue certificate and appeal against refusal

- (1) This section applies if, on an application for a certificate under section 144, an officer of Revenue and Customs (“the decision officer”) is not satisfied that the applicant has provided an officer with the information and documents required by or under section 144(2).
- (2) An officer must give written notice (“the refusal notice”) to the applicant of the decision officer's refusal to issue a certificate.
- (3) The refusal notice must specify the reasons for the refusal.
- (4) The applicant may by written notice (“the appeal notice”) appeal against the refusal.
- (5) The appeal notice must be given to an officer within 30 days of the date of the refusal notice.
- (6) Part 5 of TMA 1970 (appeals and other proceedings) is to apply in relation to an appeal under this section.
- (7) On an appeal that is notified to the tribunal, the tribunal may—
  - (a) confirm the refusal notice, or
  - (b) quash it and require an officer to issue a certificate.
- (8) In this section “the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

## PART 4

### TRANSFER PRICING

#### Modifications etc. (not altering text)

- C7** Pt. 4 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 2](#))
- C8** Pt. 4 excluded (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 2 para. 6\(2\)](#); S.I. 2011/2329, art. 3
- C9** Pt. 4 excluded (1.4.2012) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, [Sch. 4 para. 3\(2\)](#); S.I. 2011/2576, art. 5
- C10** Pt. 4 excluded (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 129\(11\)](#) (with s. 147, Sch. 17)

## CHAPTER 1

### BASIC TRANSFER-PRICING RULE

## 146 Application of this Part

This Part applies for—

- (a) corporation tax purposes, and
- (b) income tax purposes.

*Status: Point in time view as at 12/02/2019.*

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## **147 Tax calculations to be based on arm's length, not actual, provision**

- (1) For the purposes of this section “the basic pre-condition” is that—
  - (a) provision (“the actual provision”) has been made or imposed as between any two persons (“the affected persons”) by means of a transaction or series of transactions,
  - (b) the participation condition is met (see section 148),
  - (c) the actual provision is not within subsection (7) (oil transactions), and
  - (d) the actual provision differs from the provision (“the arm's length provision”) which would have been made as between independent enterprises.
- (2) Subsection (3) applies if—
  - (a) the basic pre-condition is met, and
  - (b) the actual provision confers a potential advantage in relation to United Kingdom taxation on one of the affected persons.
- (3) The profits and losses of the potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.
- (4) Subsection (5) applies if—
  - (a) the basic pre-condition is met, and
  - (b) the actual provision confers a potential advantage in relation to United Kingdom taxation (whether or not the same advantage) on each of the affected persons.
- (5) The profits and losses of each of the affected persons are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.
- (6) Subsections (3) and (5) have effect subject to—
  - (a) section 165 (exemption for dormant companies),
  - (b) section 166 (exemption for small and medium-sized enterprises),
  - <sup>F80</sup>(ba) section 206A (modification of basic rule where allowances restricted for certain oil-related expenditure),]
  - (c) section 213 (this Part generally does not affect calculation of capital allowances),
  - (d) section 214 (this Part generally does not affect calculation of chargeable gains),
  - (e) section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), <sup>F81</sup>...
  - (f) section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for) [<sup>F82</sup>, and
  - (g) section 938N of CTA 2010 (this Part treated as of no effect for the purposes of Part 21B of CTA 2010 (group mismatch schemes)).]
- (7) The actual provision is within this subsection if it is made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of sections 225F to 225J of ITTOIA 2005 or any of sections 281 to 285 of CTA 2010 (transactions and deemed transactions involving oil treated as made at market value).

*Status: Point in time view as at 12/02/2019.*

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### Textual Amendments

- F80** S. 147(6)(ba) inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 32 para. 13](#)
- F81** Word in s. 147(6)(e) omitted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(1\)](#)
- F82** S. 147(6)(g) and word inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(1\)](#)

## 148 The “participation condition”

- (1) For the purposes of section 147(1)(b), the participation condition is met if—
- condition A is met in relation to the actual provision so far as the actual provision is provision relating to financing arrangements, and
  - condition B is met in relation to the actual provision so far as the actual provision is not provision relating to financing arrangements.
- (2) Condition A is that, at the time of the making or imposition of the actual provision or within the period of six months beginning with the day on which the actual provision was made or imposed—
- one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
  - the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.
- (3) Condition B is that, at the time of the making or imposition of the actual provision—
- one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
  - the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.
- (4) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.
- (5) For the interpretation of subsections (2) and (3) see sections 157 to 163.

### Modifications etc. (not altering text)

- C11** S. 148 applied by 2009 c. 4, s. 161(3A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 124\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C12** S. 148 applied by 2005 c. 5, s. 172F(2B) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 121\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C13** S. 148 applied by 2009 c. 4, s. 445(3A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 133\(8\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C14** S. 148 applied by 2009 c. 4, s. 846(2A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 147\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#)))

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- C15** S. 148 applied (with modifications) by 2007 c. 3, s. 917A(6) (as inserted (with effect in accordance with s. 41(2) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 41\(1\)](#))
- C16** S. 148 applied by 2010 c. 8, s. 882(5D) (as inserted (with effect in accordance with s. 52(5) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 52\(2\)](#))
- C17** S. 148 applied by 2009 c. 4, s. 845(4C) (as inserted (with effect in accordance with s. 53(2) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 53\(1\)](#))
- C18** [S. 148](#) applied by 2009 c. 4, s. 849AB(9) (as inserted (with application in accordance with s. 21(3) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 21\(2\)](#))
- C19** [S. 148](#) applied by 2009 c. 4, s. 879E(7) (as inserted (with effect in accordance with Sch. 9 para. 7 of the amending Act) by [Finance Act 2019 \(c. 1\), Sch. 9 para. 6](#))

## CHAPTER 2

### KEY INTERPRETATIVE PROVISIONS

#### *Meaning of certain expressions that first appear in section 147*

#### **149 “Actual provision” and “affected persons”**

- (1) In this Part—  
     “the actual provision”, and  
     “the affected persons”,  
 have the meaning given by section 147(1).
- (2) Subsection (1) does not apply if Chapters 1 and 3 to 6 apply in accordance with section 205(2) to (4) (oil-related ring-fence trades) but, in that event, in this Part—  
     “the actual provision” means the provision mentioned in section 205(1)(b),  
 and  
     “the affected persons” means the two persons mentioned in section 205(2).
- (3) Subsections (1) and (2) are subject to subsection (4).
- (4) If the participation condition (see section 148) would not be met but for section 161 or 162 (cases in which actual provision relates, to any extent, to financing arrangements), then in section 147(1)(d), (2)(b), (3), (4)(b) and (5) “the actual provision” is a reference to the actual provision so far as relating to the financing arrangements concerned.

#### **150 “Transaction” and “series of transactions”**

- (1) In this Part “transaction” includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).
- (2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.
- (3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.
- (4) Those matters are—

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- (a) that there is no transaction in the series to which both those persons are parties,
  - (b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and
  - (c) that there is one or more transactions in the series to which neither of those persons is a party.
- (5) In this section “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

### **151 “Arm's length provision”**

- (1) In this Part “the arm's length provision” has the meaning given by section 147(1).
- (2) For the purposes of this Part, the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises include the case in which provision is made or imposed as between two persons but no provision would have been made as between independent enterprises; and references in this Part to the arm's length provision are to be read accordingly.

### **152 Arm's length provision where actual provision relates to securities**

- (1) This section applies where—
- (a) both of the affected persons are companies, and
  - (b) the actual provision is provision in relation to a security issued by one of those companies (“the issuing company”).
- (2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the loan would have been made at all in the absence of the special relationship,
  - (b) the amount which the loan would have been in the absence of the special relationship, and
  - (c) the rate of interest and other terms which would have been agreed in the absence of the special relationship.
- (3) Subsection (2) has effect subject to subsections (4) and (5).
- (4) If—
- (a) a company (“L”) makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of L's business to make loans generally,
- the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (2).
- (5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.
- (6) The matters are—
- (a) the appropriate level or extent of the issuing company's overall indebtedness,

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- (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—
  - (i) the issue of a security by the issuing company, or
  - (ii) the making of a loan, or a loan of a particular amount, to the issuing company, and
- (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

### **153 Arm's length provision where security issued and guarantee given**

- (1) This section applies where the actual provision is made or imposed by means of a series of transactions which include—
  - (a) the issuing of a security by a company which is one of the affected persons (“the issuing company”), and
  - (b) the provision of a guarantee by a company which is the other affected person.
- (2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—
  - (a) the question whether the guarantee would have been provided at all in the absence of the special relationship,
  - (b) the amount that would have been guaranteed in the absence of the special relationship, and
  - (c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship.
- (3) Subsection (2) has effect subject to subsections (4) and (5).
- (4) If—
  - (a) a company (“G”) provides a guarantee in respect of another company with which it has a special relationship, and
  - (b) it is not part of G's business to provide guarantees generally,
 the fact that it is not part of G's business to provide guarantees generally is to be disregarded in applying subsection (2).
- (5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.
- (6) The matters are—
  - (a) the appropriate level or extent of the issuing company's overall indebtedness,
  - (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—
    - (i) the issue of a security by the issuing company, or
    - (ii) the making of a loan, or a loan of a particular amount, to the issuing company, and
  - (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.



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## **154 Interpretation of sections 152 and 153**

- (1) Subsections (3) to (7) apply for the purposes of sections 152 and 153.
- (2) Subsection (6) applies also for the purposes of subsection (7)(a).
- (3) “Special relationship” means any relationship by virtue of which the participation condition is met (see section 148) in the case of the affected persons concerned.
- (4) Any reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.
- (5) One company (“A”) has a “participatory relationship” with another (“B”) if—
  - (a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.
- (6) “Security” includes securities not creating or evidencing a charge on assets.
- (7) Any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

## **155 “Potential advantage” in relation to United Kingdom taxation**

- (1) Subsection (2) applies for the purposes of this Part.
- (2) The actual provision confers a potential advantage on a person in relation to United Kingdom taxation wherever, disregarding this Part, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of Effects A and B.
- (3) Effect A is that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of the person's profits for any chargeable period.
- (4) Effect B is that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of the person.
- (5) In determining for the purposes of subsection (3) or (4) the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a non-UK resident, there is to be left out of account any income of that person which is—
  - (a) disregarded income within the meaning given by section 813 of ITA 2007 (limits on liability to income tax of non-UK residents), or

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- (b) disregarded company income within the meaning given by section 816 of that Act.
- (6) For the purposes of subsections (2) to (4)—
- [<sup>F83</sup>(a) Part 10 (corporate interest restriction),]
  - (b) paragraph E of the list in section 1000(1) of CTA 2010 (excessive interest etc treated as a distribution),
- are to be disregarded.

#### Textual Amendments

**F83** S. 155(6)(a) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 14**

### 156 “Losses” and “profits”

- (1) In this Part “losses” includes amounts which are not losses but in respect of which relief may be given in accordance with—
- (a) section 57 of ITTOIA 2005 (pre-trading expenses),
  - (b) section 88 of ITA 2007 (carry forward of certain interest),
  - (c) section 61 of CTA 2009 (pre-trading expenses),
  - (d) sections 387 to 391 of CTA 2009 (insurance companies: non-trading deficits on loan relationships),
  - (e) Chapter 16 [<sup>F84</sup>or Chapter 16A] of Part 5 of CTA 2009 (non-trading deficits on loan relationships),
  - (f) section 1223 of CTA 2009 (excess of management expenses), <sup>F85</sup>...
  - (g) Part 5 of CTA 2010 (group relief) [<sup>F86</sup>, or
  - (h) Part 5A of CTA 2010 (group relief for carried-forward losses).]
- (2) In this Part “profits” includes income.

#### Textual Amendments

**F84** Words in s. 156(1)(e) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 178(a)**

**F85** Word in s. 156(1)(f) omitted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 178(b)**

**F86** S. 156(1)(h) and word inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 178(c)**

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

### 157 Direct participation

- (1) Subsection (2) applies for the purposes of—
- (a) this Part,
  - (b) in Part 2, section 132(7), <sup>F87</sup>...
  - (c) in Part 5, section 219(2) [<sup>F88</sup>, <sup>F89</sup>...

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- (d) in Part 6A, section 259NB(4)]<sup>F90, F91</sup>...
  - (e) in Part 10, section 463(4)]<sup>F92</sup>, and
  - (f) section 608T of ITTOIA 2005.]
- (2) A person is directly participating in the management, control or capital of another person at a particular time if (and only if) that other person is at that time—
- (a) a body corporate or a firm, and
  - (b) controlled by the first person.

#### Textual Amendments

- F87** Word in s. 157(1)(b) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), Sch. 10 para. 11(a)
- F88** S. 157(1)(d) and word inserted (15.9.2016) by Finance Act 2016 (c. 24), Sch. 10 para. 11(b)
- F89** Word in s. 157(1)(c) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 15(a)
- F90** S. 157(1)(e) and word inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 15(b)
- F91** Word in s. 157(1)(d) omitted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by virtue of Finance Act 2019 (c. 1), Sch. 3 para. 6(2)(a)
- F92** S. 157(1)(f) and word inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), Sch. 3 para. 6(2)(b)

#### Modifications etc. (not altering text)

- C20** S. 157(2) applied (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), s. 106(7)(a)
- C21** S. 157(2) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), s. 77(1) (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))
- C22** S. 157(2) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), s. 79(1) (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

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

### 158 Indirect participation: defined by sections 159 to 162

- (1) This section is about how to read the references, in this Part and in some other provisions of this Act, to indirect participation.
- (2) For the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 161 so provides.
- (3) For the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 162 so provides.
- (4) For the purposes of—
  - (a) sections 154(5) and 204(4),
  - (b) in Part 2, section 132(7),<sup>F93</sup>...
  - (c) in Part 5, section 219(2)]<sup>F94</sup>, and

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(d) in Part 6A, section 259NB(4),]

a person is indirectly participating in the management, control or capital of another person only if section 159 or 160 so provides.

#### Textual Amendments

**F93** Word in s. 158(4)(b) omitted (15.9.2016) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 12\(a\)](#)

**F94** S. 158(4)(d) and word inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 12\(b\)](#)

#### Modifications etc. (not altering text)

**C23** Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 106\(7\)\(b\)](#)

**C24** S. 158(4) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 79\(1\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2)))

**C25** S. 158(4) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(1\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2)))

### 159 Indirect participation: potential direct participant

(1) Subsection (2) applies for the purposes of—

- (a) sections 148(2) and (3), 154(5), 175(2) and 204(4),
- (b) in Part 2, section 132(7), <sup>F95</sup>...
- (c) in Part 5, section 219(2) [<sup>F96</sup>, <sup>F97</sup> ...
- (d) in Part 6A, section 259NB(4)] [<sup>F98</sup>, <sup>F99</sup> ...
- (e) in Part 10, section 463(4)] [<sup>F100</sup>, and
- (f) section 608T of ITTOIA 2005.]

(2) A person (“P”) is indirectly participating in the management, control or capital of another person (“A”) at a particular time if P would be directly participating in the management, control or capital of A at that time if the rights and powers attributed to P included all the rights and powers mentioned in subsection (3) that are not already attributed to P for the purpose of deciding under section 157 whether P is directly participating in the management, control or capital of A.

(3) The rights and powers referred to in subsection (2) are—

- (a) rights and powers which P is entitled to acquire at a future date,
- (b) rights and powers which P will, at a future date, become entitled to acquire,
- (c) rights and powers of persons other than P so far as they are rights or powers falling within subsection (4),
- (d) rights and powers of any person with whom P is connected (see section 163), and
- (e) rights and powers which would be attributed by subsection (2) to a person with whom P is connected were it being decided under that subsection whether that connected person is indirectly participating in the management, control or capital of A.

(4) Rights and powers fall within this subsection so far as they—

*Status: Point in time view as at 12/02/2019.*

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

#### Textual Amendments

- F95** Word in s. 159(1)(b) omitted (15.9.2016) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 13\(a\)](#)
- F96** S. 159(1)(d) and word inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 13\(b\)](#)
- F97** Word in s. 159(1)(c) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 16\(a\)](#)
- F98** S. 159(1)(e) and word inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 16\(b\)](#)
- F99** Word in s. 159(1)(d) omitted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by virtue of [Finance Act 2019 \(c. 1\)](#), [Sch. 3 para. 6\(3\)\(a\)](#)
- F100** S. 159(1)(f) and word inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 3 para. 6\(3\)\(b\)](#)

#### Modifications etc. (not altering text)

- C23** Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 106\(7\)\(b\)](#)
- C26** S. 159(2) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(1\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2)))
- C27** S. 159(2) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 79\(1\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2)))

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## 160 Indirect participation: one of several major participants

- (1) Subsection (2) applies for the purposes of—
- (a) sections 148(2) and (3), 154(5), 175(2) and 204(4),
  - (b) in Part 2, section 132(7), <sup>F101</sup> ...
  - (c) in Part 5, section 219(2) [<sup>F102</sup>, <sup>F103</sup> ...
  - (d) in Part 6A, section 259NB(4)] [<sup>F104</sup>, <sup>F105</sup> ...
  - (e) in Part 10, section 463(4)] [<sup>F106</sup>, and
  - (f) section 608T of ITTOIA 2005.]
- (2) A person is indirectly participating in the management, control or capital of another person at a particular time if the first person is, at that time, one of a number of major participants in that other person's enterprise.
- (3) For the purposes of this section, a person (“A”) is a major participant in another person's enterprise at a particular time if at that time—
- (a) that other person (“the subordinate”) is a body corporate or firm, and
  - (b) the 40% test is met in the case of each of two persons—
    - (i) who, taken together, control the subordinate, and
    - (ii) of whom one is A.
- (4) For the purposes of this section, the 40% test is met in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the subordinate.
- (5) For the purposes of this section—
- (a) the question whether a person is controlled by any two or more persons taken together, and
  - (b) any question whether the 40% test is met in the case of a person who is one of two persons,
- is to be determined after attributing to each of the persons all the rights and powers which would be attributed by section 159(2) to a person were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of another person.
- (6) References in this section—
- (a) to rights and powers of a person, or
  - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

### Textual Amendments

**F101** Word in s. 160(1)(b) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), Sch. 10 para. 14(a)

**F102** S. 160(1)(d) and word inserted (15.9.2016) by Finance Act 2016 (c. 24), Sch. 10 para. 14(b)

**F103** Word in s. 160(1)(c) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 17(a)

**F104** S. 160(1)(e) and word inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 17(b)

*Status: Point in time view as at 12/02/2019.*

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**F105** Word in s. 160(1)(d) omitted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 3 para. 6(4)(a)**

**F106** S. 160(1)(f) and word inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 3 para. 6(4)(b)**

**Modifications etc. (not altering text)**

**C23** Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 106(7)(b)**

**C28** S. 160(2) applied by 2007 c. 3, s. 517U(7) (as inserted (with effect in accordance with s. 82 of the amending Act) by Finance Act 2016 (c. 24), **s. 79(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

**C29** S. 160(2) applied by 2010 c. 4, s. 356OT(7) (as inserted (with effect in accordance with s. 81 of the amending Act) by Finance Act 2016 (c. 24), **s. 77(1)** (and also with effect in accordance with Finance (No. 2) Act 2017 (c. 32), s. 39(1)(2)))

**161 Indirect participation: sections 148 and 175: financing cases**

- (1) Subsection (2) applies for the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a).
- (2) A person (“P”) is indirectly participating in the management, control or capital of another (“A”) at the time of the making or imposition of the actual provision if—
  - (a) the actual provision relates, to any extent, to financing arrangements for A,
  - (b) A is a body corporate or firm,
  - (c) P and other persons acted together in relation to the financing arrangements, and
  - (d) P would be taken to have control of A if, at any relevant time, there were attributed to P the rights and powers of each of the other persons mentioned in paragraph (c).
- (3) It is immaterial for the purposes of subsection (2)(c) whether P and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.
- (4) In subsection (2)(d) “relevant time” means—
  - (a) a time when P and the other persons were acting together in relation to the financing arrangements, or
  - (b) a time in the period of six months beginning with the day on which they ceased so to act.
- (5) In determining for the purposes of subsection (2)(d) whether P would be taken to have control of another person (“A”), the rights and powers of any person (and not just P) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.
- (6) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

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**Modifications etc. (not altering text)**

**C23** Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 106\(7\)\(b\)](#)

**162 Indirect participation: sections 148 and 175: further financing cases**

- (1) Subsection (2) applies for the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b).
- (2) A person (“Q”) is indirectly participating in the management, control or capital of each of the affected persons at the time of the making or imposition of the actual provision if—
  - (a) the actual provision relates, to any extent, to financing arrangements for one of the affected persons (“B”),
  - (b) B is a body corporate or firm,
  - (c) Q and other persons acted together in relation to the financing arrangements, and
  - (d) Q would be taken to have control of both B and the other affected person if, at any relevant time, there were attributed to Q the rights and powers of each of the other persons mentioned in paragraph (c).
- (3) It is immaterial for the purposes of subsection (2)(c) whether Q and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.
- (4) In subsection (2)(d) “relevant time” means—
  - (a) a time when Q and the other persons were acting together in relation to the financing arrangements, or
  - (b) a time in the period of six months beginning with the day on which they ceased so to act.
- (5) In determining for the purposes of subsection (2)(d) whether Q would be taken to have control of another person (“A”), the rights and powers of any person (and not just Q) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.
- (6) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

**Modifications etc. (not altering text)**

**C23** Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 106\(7\)\(b\)](#)

**163 Meaning of “connected” in section 159**

- (1) Subsections (2) and (3) apply for the purposes of section 159 and this section.



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- (2) Two persons are connected with each other if one of them is an individual and the other is—
- (a) the individual's spouse or civil partner,
  - (b) a relative of the individual,
  - (c) a relative of the individual's spouse or civil partner, or
  - (d) the spouse, or civil partner, of a person within paragraph (b) or (c).
- (3) Two persons are connected with each other if one of them is a trustee of a settlement and the other is—
- (a) a person who in relation to that settlement is a settlor, or
  - (b) a person who is connected with a person within paragraph (a).
- (4) In this section—
- “relative” means brother, sister, ancestor or lineal descendant, and
  - “settlement” and “settlor” have the same meaning as in section 620 of ITTOIA 2005.

**Modifications etc. (not altering text)**

**C23** Ss. 158-163 applied (with modifications) (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 106\(7\)\(b\)](#)

*Application of OECD principles*

**164 Part to be interpreted in accordance with OECD principles**

- (1) This Part is to be read in such manner as best secures consistency between—
- (a) the effect given to sections 147(1)(a), (b) and (d) and (2) to (6), 148 and 151(2), and
  - (b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.
- (2) Subsection (1) has effect subject to—
- section 147(1)(c) and (7) (oil-related provision to which Part does not apply),
  - sections 205 and 206 (rules for oil-related ring-fence trades),
  - section 217(3) to (7) (provision for sales of oil),
  - section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and
  - section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).
- (3) In this section “the OECD model” means—
- (a) the rules which, at the passing of ICTA (which occurred on 9 February 1988), were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or
  - (b) any rules in the same or equivalent terms.

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- [<sup>F107</sup>(4) In this section “the transfer pricing guidelines” means—
- (a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations approved by the Organisation for Economic Co-operation and Development (OECD) on 22 July 2010 [<sup>F108</sup>as revised by the report, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports, published by the OECD on 5 October 2015] , or
  - (b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,
- including, in either case, [<sup>F109</sup>material which is ] published by the OECD as part of (or by way of update or supplement to) the version or other document concerned [<sup>F110</sup>and which is designated for the time being by order made by the Treasury] .]
- (5) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

#### Textual Amendments

**F107** S. 164(4) substituted (with effect in accordance with s. 58(2) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 58\(1\)](#)

**F108** Words in s. 164(4)(a) inserted (with effect in accordance with s. 75(3) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 75\(1\)\(a\)](#)

**F109** Words in s. 164(4) substituted (with effect in accordance with s. 75(3) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 75\(1\)\(b\)\(i\)](#)

**F110** Words in s. 164(4) substituted (with effect in accordance with s. 75(3) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 75\(1\)\(b\)\(ii\)](#)

## CHAPTER 3

### EXEMPTIONS FROM BASIC RULE

#### 165 Exemption for dormant companies

- (1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which meets the condition in subsection (2).
- (2) The condition is that—
  - (a) the company was dormant throughout the pre-qualifying period, and
  - (b) apart from section 147, the company has continued to be dormant at all times since the end of the pre-qualifying period.
- (3) In subsection (2) “the pre-qualifying period” means—
  - (a) if there is an accounting period of the company that ends on 31 March 2004, that accounting period, or
  - (b) if there is no such accounting period, the period of 3 months ending with that date.

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- (4) In this section “dormant” has the meaning given by section 1169 of the Companies Act 2006.

## 166 Exemption for small and medium-sized enterprises

- (1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see section 172).
- (2) Exceptions to subsection (1) are provided—
- in the case of a small enterprise, by <sup>F111</sup>sections 167 and 167A], and
  - in the case of a medium-sized enterprise, by sections 167 and 168.

### Textual Amendments

**F111** Words in s. 166(2)(a) substituted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 2 para. 3](#)

### Modifications etc. (not altering text)

**C30** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 542\(2\)](#), [1184\(1\)](#) (with [Sch. 2](#))

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

- (1) Subsections (2) and (3) set out exceptions to section 166(1).
- (2) The first exception is if the small or medium-sized enterprise elects for section 166(1) not to apply in relation to the chargeable period.
- Any such election is irrevocable.
- (3) The second exception is if—
- the other affected person, or
  - a party to a relevant transaction,
- is, at the time when the actual provision is or was made or imposed, a resident of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).
- (4) For the purposes of subsection (3)—
- a “party to a relevant transaction” is a person who, if the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions, and
  - “qualifying territory” and “non-qualifying territory” are defined in section 173.
- (5) In subsection (3) “resident”, in relation to a territory—
- means a person who, under the law of that territory, is liable to tax there by reason of the person's domicile, residence or place of management, but
  - does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

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#### Modifications etc. (not altering text)

**C30** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2), 1184(1)** (with Sch. 2)

### [<sup>F112</sup>167A] **Small enterprises: exception from exemption: transfer pricing notice**

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—
- (a) the potentially advantaged person is a small enterprise for the chargeable period,
  - (b) the person meets the condition in subsection (2), and
  - (c) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A person meets the condition referred to in subsection (1)(b) if—
- (a) provision has been made or imposed as between the person and any other person by means of a transaction or series of transactions,
  - (b) the basic pre-condition in section 147 is met in respect of the provision, and
  - (c) the transaction, or one or more of the series of transactions, is taken into account in calculating, for the purposes of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc), the relevant IP profits of a trade of a person who is or was a party to the transaction or transactions.
- (3) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.]

#### Textual Amendments

**F112** S. 167A inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 4**

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

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—
- (a) the potentially advantaged person is a medium-sized enterprise for the chargeable period, and
  - (b) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.

#### Modifications etc. (not altering text)

**C30** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2), 1184(1)** (with Sch. 2)

*Status: Point in time view as at 12/02/2019.*

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## 169 Giving of transfer pricing notices

- (1) This section applies to a transfer pricing notice given to a person.
- (2) The notice may be given in relation to—
  - (a) any provision specified, or of a description specified, in the notice, or
  - (b) every provision in relation to which one or other of the assumptions in section 147(3) and (5) would, apart from section 166(1), be required to be made when calculating the person's profits and losses for tax purposes.
- (3) The notice may be given only after a notice of enquiry has been given to the person in relation to the person's tax return for the chargeable period concerned.
- (4) The notice must identify the officer of Revenue and Customs to whom any notice of appeal under section 170 is to be given.
- (5) In subsection (3) “notice of enquiry” means a notice under—
  - (a) section 9A or 12AC of TMA 1970, or
  - (b) paragraph 24 of Schedule 18 to FA 1998.

### Modifications etc. (not altering text)

**C30** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 542(2), 1184(1)** (with [Sch. 2](#))

## 170 Appeals against transfer pricing notices

- (1) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only [<sup>F113</sup>on one of the following grounds—
  - (a) that the condition in section 167A(1)(b) is not met, or
  - (b) that the condition in section 168(1)(a) is not met.]
- (2) Any such appeal must be brought by giving written notice of appeal to the officer of Revenue and Customs identified in the notice in accordance with section 169(4).
- (3) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

### Textual Amendments

**F113** Words in s. 170(1) substituted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 2 para. 5**

### Modifications etc. (not altering text)

**C30** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 542(2), 1184(1)** (with [Sch. 2](#))

## 171 Tax returns where transfer pricing notice given

- (1) If a transfer pricing notice is given to a person (“T”), T may amend T's tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—

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- (a) the day on which the notice is given, or
  - (b) if T appeals under section 170 against the decision to give the notice, the day on which the appeal is finally determined or abandoned.
- (2) If a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—
- (a) the end of the period of 90 days specified in subsection (1), or
  - (b) the earlier amendment of the tax return for the purpose of complying with the notice.
- [<sup>F114</sup>(2A) Subsection (2) does not apply to a partial closure notice which does not relate to any matter to which the transfer pricing notice relates.]
- (3) So far as relating to any provision made or imposed by or in relation to a person—
- (a) who is a [<sup>F115</sup>small or] medium-sized enterprise for a chargeable period,
  - (b) who does not make an election under section 167(2) for that period, and
  - (c) who is not excepted from section 166(1) in relation to that provision for that period because of section 167(3),
- the tax return required to be made for that period is a return that disregards section 147(3) and (5).
- (4) Subsection (3) does not prevent a tax return for a period becoming incorrect if in the case of any provision made or imposed—
- (a) a transfer pricing notice is given which has effect in relation to that provision for that period,
  - (b) the return is not amended in accordance with subsection (1) for the purpose of complying with the notice, and
  - (c) the return ought to have been so amended.
- (5) In this section—
- “closure notice” means a notice under—
    - (a) section 28A or 28B of TMA 1970, or
    - (b) paragraph 32 of Schedule 18 to FA 1998,
  - “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule, and
  - “tax return” means—
    - (a) a return under section 8, 8A or 12AA of TMA 1970, or
    - (b) a company tax return.

#### Textual Amendments

**F114** S. 171(2A) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 15 para. 40

**F115** Words in s. 171(3)(a) inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), Sch. 2 para. 6

#### Modifications etc. (not altering text)

**C30** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 542(2), 1184(1) (with Sch. 2)

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

- (1) In this Chapter—
  - (a) “small enterprise” means a small enterprise as defined in the Annex, and
  - (b) “medium-sized enterprise” means an enterprise which—
    - (i) falls within the category of micro, small and medium-sized enterprises as defined in the Annex, and
    - (ii) is not a small enterprise as defined in the Annex.
- (2) For the purposes of subsection (1), the Annex has effect with the modifications set out in subsections (4) to (7).
- (3) In this section “the Annex” means the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (concerning the definition of micro, small and medium-sized businesses).
- (4) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Part whether—
  - (a) that enterprise, or
  - (b) any other enterprise (including that of the liquidator or administrator),is a small or medium-sized enterprise.
- (5) Article 3 of the Annex has effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).
- (6) The first sentence of Article 4(1) of the Annex has effect as if the data to apply to—
  - (a) the headcount of staff, and
  - (b) the financial amounts,were the data relating to the chargeable period referred to in section 166(1) (instead of the period described in that sentence) and calculated on an annual basis.
- (7) Article 4 of the Annex has effect with the omission of the following provisions—
  - (a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts),
  - (b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods), and
  - (c) paragraph 3 (genuine estimate in case of newly established enterprise).

## **173 Meaning of “qualifying territory” and “non-qualifying territory”**

- (1) In section 167(3)—

“non-qualifying territory” means any territory which is not a qualifying territory, and

“qualifying territory” means—

  - (a) the United Kingdom, or
  - (b) any territory in relation to which condition A or condition B is met.
- (2) Condition A is that—
  - (a) double taxation arrangements have been made in relation to the territory,
  - (b) the arrangements include a non-discrimination provision, and

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- (c) the territory is not designated as a non-qualifying territory for the purposes of this subsection in regulations made by the Treasury.
- (3) Condition B is that—
- (a) double taxation arrangements have been made in relation to the territory, and
  - (b) the territory is designated as a qualifying territory for the purposes of this subsection in regulations made by the Treasury.
- (4) For the purposes of subsection (2)(b) a “non-discrimination provision”, in relation to any double taxation arrangements, is a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—
- (a) any taxation, or
  - (b) any requirement connected with taxation,
- which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.
- (5) In subsection (4) “national”, in relation to a state, includes—
- (a) any individual possessing the nationality or citizenship of the state, and
  - (b) any legal person, partnership or association deriving its status as such from the law in force in that state.
- (6) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).
- (7) Regulations under this section may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

## CHAPTER 4

### POSITION, IF ONLY ONE AFFECTED PERSON POTENTIALLY ADVANTAGED, OF OTHER AFFECTED PERSON

#### *Claim by affected person who is not advantaged*

#### **174 Claim by the affected person who is not potentially advantaged**

- (1) Subsection (2) applies if—
- (a) only one of the affected persons (in this Chapter called “the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and
  - (b) the other affected person (in this Chapter called “the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (2) On the making of a claim by the disadvantaged person—



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- (a) the profits and losses of the disadvantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision, and
  - (b) despite any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments are to be made in the disadvantaged person's case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.
- (3) Provision about claims under this section is made by—
- [<sup>F116</sup>section 174A (claim not allowed in some cases where the disadvantaged person is within the charge to income tax), ]
  - section 175 (claim not allowed in some cases where actual provision relates to a security issued by one of the affected persons),
  - section 176 (claim cannot be made unless advantaged person has made return on the basis that the arm's length provision applies),
  - section 177 (when claim may be made or amended), and
  - sections 181 to 184 (option to make claims in accordance with section 182 in some cases where actual provision relates to a security issued by one of the affected persons).
- (4) Subsection (2) has effect subject to—
- section 180 (closing trading stock and closing work in progress in a trade),
  - sections 188 and 189 (effect of claims under this section on double taxation relief),
  - Chapter 5 (provision, where liabilities of an affected person under securities issued by that person are guaranteed, for attribution to guarantor of things done by that affected person),
  - section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and
  - section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

#### Textual Amendments

**F116** Words in s. 174(3) inserted (with effect in accordance with s. 75(5)(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 75\(2\)](#)

#### [<sup>F117</sup>174A] Claims under section 174 where disadvantaged person within charge to income tax

A claim under section 174 may not be made if—

- (a) the disadvantaged person is a person (other than a company) within the charge to income tax in respect of profits arising from the relevant activities, and
- (b) the advantaged person is a company.]

#### Textual Amendments

**F117** S. 174A inserted (with effect in accordance with s. 75(5)(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 75\(3\)](#)

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## **175 Claims under section 174 where actual provision relates to a security**

- (1) A claim under section 174 may not be made if—
  - (a) the participation condition (see section 148) would not be satisfied but for section 161 or 162,
  - (b) the actual provision is provision in relation to a security issued by one of the affected persons (“the issuer”), and
  - (c) a guarantee is provided in relation to the security by a person with whom the issuer has a participatory relationship.
- (2) For the purposes of subsection (1), one person (“A”) has a “participatory relationship” with another (“B”) if—
  - (a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.
- (3) In subsections (1)(b) and (4)(a) “security” includes securities not creating or evidencing a charge on assets.
- (4) For the purposes of subsection (1)(b), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.
- (5) The reference in subsection (1)(c) to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) if the issuer is a company, a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuer has a reasonable expectation that in the event of a default by the issuer the person will be paid by, or out of the assets of, one or more companies.

## **176 Claims under section 174: advantaged person must have made return**

- (1) A claim may not be made under section 174 unless a calculation has been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision.
- (2) A claim made under section 174 must be consistent with the calculation made on that basis in the case of the advantaged person.
- (3) For the purposes of subsections (1) and (2), a calculation is to be taken to have been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision if (and only if)—
  - (a) the calculations made for the purposes of any return by the advantaged person have been made on that basis because of this Part, or
  - (b) a relevant notice (see section 190) given to the advantaged person takes account of a determination in pursuance of this Part of an amount to be brought into account for tax purposes on that basis.

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## **177 Time for making, or amending, claim under section 174**

- (1) A claim under section 174 can be made only in the period mentioned in subsection (2) or (3).
- (2) If a return has been made by the advantaged person on the basis mentioned in section 176(1), the period is the two years beginning with the day of the making of the return.
- (3) If a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) has been given to the advantaged person, the period is the two years beginning with the day on which that notice was given.
- (4) Subsection (5) applies if—
  - (a) a claim under section 174 is made in relation to a return made on the basis mentioned in section 176(1), and
  - (b) a relevant notice taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.
- (5) The disadvantaged person is entitled, within the period mentioned in subsection (3), to make any such amendment of the claim as may be appropriate in consequence of the determination contained in the relevant notice.
- (6) Subsections (1) and (5) have effect subject to section 186(3) (which provides for the extension of the period for making or amending a claim).

## **178 Meaning of “return” in sections 176 and 177**

- (1) In sections 176 and 177 “return” means—
  - (a) any return required to be made under TMA 1970 or under Schedule 18 to FA 1998 for income tax or corporation tax purposes, or
  - (b) any voluntary amendment of a return within paragraph (a).
- (2) In subsection (1)(b) “voluntary amendment” means—
  - (a) an amendment under section 9ZA or 12ABA of TMA 1970 (amendment of personal, trustee or partnership return by taxpayer), or
  - (b) an amendment under Schedule 18 to FA 1998 other than one made in response to the giving of a relevant notice (see section 190).

*Claims: special cases*

## **179 Compensating payment if advantaged person is controlled foreign company**

- [<sup>F118</sup>(1) Subsection (2) applies if—
- (a) the actual provision is provision made or imposed in relation to a CFC,
  - (b) for the purpose of determining the CFC's assumed taxable total profits for an accounting period, the CFC's profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,
  - (c) in relation to the accounting period, sums are charged on chargeable companies at step 5 in section 371BC(1), and
  - (d) in consequence of the application of section 147(3) or (5) as mentioned in paragraph (b), the total of those sums is more than it would otherwise be.]

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- (2) Sections 174 to 178 have effect as if the [F119CFC] were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.
- (3) In applying sections 174 to 178 in a case in which they apply because of subsection (2)
- (a) references to the advantaged person in sections 176(3)(a) and (b) and 177(2), (3) and (4)(b) include a reference to any of the [F120chargeable companies on which a sum is charged], and
  - (b) references to corporation tax include a reference to [F121the CFC charge].
- [F122(4) In this section terms which are defined in Part 9A have the same meaning as they have in that Part.
- (5) For the purposes of subsections (1)(c) and (d) and (3)(a) assume that any claims made under Chapter 9 of Part 9A for the accounting period were not made.]

#### Textual Amendments

**F118** S. 179(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(2\)](#)

**F119** Words in s. 179(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(3\)](#)

**F120** Words in s. 179(3)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(4\)\(a\)](#)

**F121** Words in s. 179(3)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(4\)\(b\)](#)

**F122** S. 179(4)(5) substituted for s. 179(4) (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(5\)](#)

#### 180 Application of section 174(2)(a) in relation to transfers of trading stock etc

- (1) Section 174(2)(a) does not affect the credits to be brought into account by the disadvantaged person in respect of—
- (a) closing trading stock, or
  - (b) closing work in progress in a trade,
- for accounting periods ending on or after the day given by subsection (2).
- (2) That day is the last day of the accounting period of the advantaged person in which the actual provision was made or imposed.
- (3) For the purposes of this section “trading stock”, in relation to any trade, has the meaning given by—
- (a) section 174 of ITTOIA 2005, or
  - (b) section 163 of CTA 2009.

*Alternative way of claiming if a security is involved*

#### 181 Section 182 applies to claims where actual provision relates to a security

- (1) Subsection (2) applies if—
- (a) both of the affected persons are companies, and
  - (b) the actual provision is provision in relation to a security issued by one of those companies.
- (2) A claim under section 174 may be made in accordance with section 182.

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- (3) For the purposes of this Part, a “section 182 claim” is a claim under section 174 made in accordance with section 182.
- (4) In subsections (1)(b) and (5)(a) “security” includes securities not creating or evidencing a charge on assets.
- (5) For the purposes of subsection (1)(b), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

### **182 Making of section 182 claims**

- (1) A section 182 claim may be made by—
  - (a) the disadvantaged person, or
  - (b) the advantaged person.
- (2) A section 182 claim made by the advantaged person is to be taken to be made on behalf of the disadvantaged person.
- (3) A section 182 claim may be made before or after a calculation within section 176(1) has been made.
- (4) A section 182 claim must be made either—
  - (a) at any time before the end of the period mentioned in section 177(2), or
  - (b) within the period mentioned in section 177(3).
- (5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making a claim).

### **183 Giving effect to section 182 claims**

- (1) A section 182 claim is not a claim within paragraph 57 or 58 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters).
- (2) Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to TMA 1970) has effect in relation to a section 182 claim.
- (3) If—
  - (a) a section 182 claim is made before a calculation within section 176(1) has been made,
  - (b) such a calculation is subsequently made, and
  - (c) the claim is not consistent with the calculation,the affected persons are to be treated as if (instead of the claim actually made) a claim had been made that was consistent with the calculation.
- (4) All such adjustments are to be made (including by the making of assessments) as are required to give effect to subsection (3).
- (5) Subsection (4) has effect despite any limit on the time within which any adjustment may be made.

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## **184 Amending a section 182 claim if it is followed by relevant notice**

- (1) Subsection (2) applies if—
  - (a) a section 182 claim is made,
  - (b) a return is subsequently made by the advantaged person on the basis mentioned in section 176(1), and
  - (c) a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.
- (2) If any amendment of the claim is appropriate in consequence of the determination contained in the relevant notice, the amendment may be made by—
  - (a) the disadvantaged person, or
  - (b) the advantaged person.
- (3) If an amendment under subsection (2) is made by the advantaged person it is to be taken to be made on behalf of the disadvantaged person.
- (4) Any amendment under subsection (2) must be made within the period mentioned in section 177(3).
- (5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making an amendment).

### *Notification to persons who may be disadvantaged*

## **185 Notice to potential claimants**

- (1) Subsection (2) applies if—
  - (a) a relevant notice (see section 190) is given to any person,
  - (b) the notice, or anything contained in it, takes account of a transfer-pricing determination, and
  - (c) it appears to an officer that there is a person (“DP”) who is or may be a disadvantaged person by reference to the subject-matter of the determination.
- (2) The officer must give to DP a notice containing particulars of the determination.
- (3) A contravention of subsection (2) does not affect the validity—
  - (a) of the relevant notice, or
  - (b) of any determination to which the notice relates.
- (4) For the purposes of this section, a person is a disadvantaged person by reference to the subject-matter of a transfer-pricing determination if (and only if) the person—
  - (a) is entitled, in consequence of the making of the determination, to make or amend a claim under section 174, or
  - (b) will be entitled, because of section 212(3), to be a party to any proceedings on an appeal relating to the determination.
- (5) In this section—
 

“officer” means officer of Revenue and Customs, and

“transfer-pricing determination” means a determination of an amount that is to be brought into account for tax purposes in respect of—

  - (a) any assumption made under section 147(3) or (5), or

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(b) any advance-pricing-agreement assumptions (see section 222(6)).

### **186 Extending claim period if notice under section 185 not given or given late**

- (1) If there is a contravention of section 185(2), the Commissioners must consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim under section 174.
- (2) Subsection (3) applies if—
  - (a) there is a contravention of section 185(2), or
  - (b) a notice required by section 185(2) is given after the relevant notice concerned.
- (3) The Commissioners may, if they think fit, treat the period for the making or amendment of a claim under section 174 in the case concerned as extended by such further period as appears to them to be appropriate.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

#### *Treatment of interest where claim made*

### **187 Tax treatment if actual interest exceeds arm's length interest**

- (1) Subsection (6) applies if the following conditions are met.
- (2) Condition A is that interest is paid by any person under the actual provision.
- (3) Condition B is that section 147(3) or (5) applies in relation to the actual provision.
- (4) Condition C is—
  - (a) that the amount (“ALINT”) of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision, or
  - (b) that there would not have been any interest payable under the arm's length provision (so that ALINT is nil).
- (5) Condition D is that the person receiving the interest paid under the actual provision makes—
  - (a) a claim under section 174, or
  - (b) a section 182 claim.
- (6) The interest paid under the actual provision, so far as it exceeds ALINT—
  - (a) is not to be regarded as chargeable under Chapter 2 of Part 4 of ITTOIA 2005,
  - (b) is not subject to the provisions of Part 15 of ITA 2007 (deduction of income tax at source), and
  - (c) is not required to be brought into account under Part 5 of CTA 2009 (loan relationships) as a non-trading credit.

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### *[<sup>F123</sup>Treatment of interest where claim prevented by section 174A*

#### **Textual Amendments**

**F123** S. 187A and cross-heading inserted (with effect in accordance with s. 75(5)(6) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 75\(4\)](#)

### **187A Excess interest treated as a <sup>F124</sup>... distribution**

- (1) Subsection (2) applies if Conditions A to C in section 187 are met in circumstances where section 174A prevents a claim under section 174.
- (2) The interest paid under the actual provision, so far as it exceeds ALINT, is treated for the purposes of the Income Tax Acts as a dividend paid by the company which paid the interest (and, accordingly, as a <sup>F125</sup>...distribution).]

#### **Textual Amendments**

**F124** Word in [s. 187A](#) heading omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 68\(3\)](#)

**F125** Word in [s. 187A\(2\)](#) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 68\(3\)](#)

### *Adjustment of double taxation relief where claim made*

### **188 Double taxation relief by way of credit for foreign tax**

- (1) Subsection (2) applies if—
  - (a) a claim is made under section 174, and
  - (b) the disadvantaged person (“DP”) is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm's length provision was made or imposed instead of the actual provision.
- (2) Assumptions A and B are to be made in DP's case in relation to any credit for foreign tax which DP has been, or may be, given—
  - (a) under any double taxation arrangements, or
  - (b) under section 18(1)(b) and (2) (relief under unilateral relief arrangements).
- (3) Subsection (2) has effect subject to section 189(2).
- (4) Assumption A is that the foreign tax paid or payable by DP does not include any amount of foreign tax which would not be or have become payable were it to be assumed for the purposes of that tax that the arm's length provision had been made or imposed instead of the actual provision.
- (5) Assumption B is that the amount of DP's relevant profits in respect of which DP is given credit for foreign tax does not include the amount (if any) by which DP's relevant profits are treated as reduced in accordance with section 174.
- (6) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—



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- (a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and
  - (b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.
- (7) In subsection (5) “DP's relevant profits” means the profits arising to DP from the carrying on of the relevant activities (see section 216).
- (8) In this section—
- “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom), and
  - “foreign tax” means—
    - (a) any tax under the law of a territory outside the United Kingdom, or
    - (b) any amount that, for the purposes of any double taxation arrangements, is to be treated as if it were tax under the law of a territory outside the United Kingdom.
- (9) In determining for the purposes of this section whether a person is—
- (a) under any double taxation arrangements, or
  - (b) under section 18(1)(b) and (2),
- to be given credit for foreign tax, ignore any requirement that a claim is made before such a credit is given.

## **189 Double taxation relief by way of deduction for foreign tax**

- (1) Subsection (2) applies if—
- (a) a claim is made under section 174,
  - (b) the disadvantaged person (“DP”) is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm's length provision was made or imposed instead of the actual provision,
  - (c) the application of that basis in the calculation of DP's profits or losses for any chargeable period involves a reduction in the amount of any income, and
  - (d) that income is also income that is to be reduced in accordance with section 112(1) (deduction for foreign tax where no credit allowed).
- (2) If this subsection applies—
- (a) the reduction mentioned in subsection (1)(c) is to be treated as made before any reduction under section 112(1), and
  - (b) tax paid, in the place in which any income arises, on so much of that income as is represented by the amount of the reduction mentioned in subsection (1)(c) is to be disregarded for the purposes of section 112(1).
- (3) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—
- (a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and
  - (b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.

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### *Interpretation of Chapter*

#### **190 Meaning of “relevant notice”**

In this Chapter “relevant notice” means—

- (a) a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,
- (b) a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,
- (c) a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,
- (d) a notice under section 30B(1) of TMA 1970 amending a partnership return,
- (e) a notice of an assessment under section 29 of TMA 1970,
- (f) a notice of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), or
- (g) a notice of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.

## **CHAPTER 5**

### POSITION OF GUARANTOR OF AFFECTED PERSON'S LIABILITIES UNDER A SECURITY ISSUED BY THE PERSON

#### **191 When sections 192 to 194 apply**

- (1) Sections 192 to 194 apply if—
  - (a) one of the affected persons (“the issuing company”) is a company that has liabilities under a security issued by it,
  - (b) those liabilities are to any extent the subject of a guarantee provided by a company (“the guarantor company”),
  - (c) in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5), and
  - (d) that reduction is required because of section 153.
- (2) In subsections (1)(a) and (3)(a) “security” includes securities not creating or evidencing a charge on assets.
- (3) For the purposes of subsection (1)(a), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (1)(a) to a security is to be read accordingly.
- (4) In subsection (1)(b) the reference to a guarantee includes—
  - (a) a reference to a surety, and

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- (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

(5) In this Chapter—

- “the guarantor company” has the meaning given by subsection (1)(b),
- “the issuing company” has the meaning given by subsection (1)(a), and
- “the security” means the security mentioned in subsection (1)(a).

## **192 Attribution to guarantor company of things done by issuing company**

(1) On the making of a claim, the guarantor company is, to the extent of the reduction mentioned in section 191(1)(c), to be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—

- (a) had issued the security,
- (b) owed the liabilities under it, and
- (c) had paid any interest or other amounts paid under it by the issuing company.

(2) Subsection (1) is subject to subsection (3).

(3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person), TD must not exceed TR, where—

TD is the total of the amounts brought into account by the guarantor companies because of subsection (1), and

TR is the total amount of the reductions within section 191(1)(c).

(4) Provision about claims under subsection (1) is made by—

section 193 (interaction between claims under subsection (1) and claims under section 174), and

section 194 (general provision about claims under subsection (1)).

(5) In subsection (1) “the Taxes Acts” has the meaning given by section 118(1) of TMA 1970.

(6) In subsection (3) any reference to a guarantee includes—

- (a) a reference to a surety, and
- (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

## **193 Interaction between claims under sections 174 and 192(1)**

(1) In this section “the loan provision” means the actual provision made or imposed between—

- (a) the issuing company, and
- (b) another company (“the lending company”),

which is provision in relation to the security.

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- (2) Subsections (3) and (4) apply if—
- (a) the guarantor company makes a claim under section 192(1), and
  - (b) the lending company makes a claim under section 174 in relation to the loan provision.
- (3) In determining the arm's length provision for the purposes of section 174(2)(a) in relation to the lending company's claim, additional amounts are to be brought into account as credits corresponding to the debits that fall to be brought into account by the guarantor company because of section 192(1).
- (4) If—
- (a) the lending company makes its claim under section 174 before the guarantor company makes its claim under section 192(1), and
  - (b) the calculation on which the lending company's claim is based does not comply with subsection (3),
- the guarantor company's claim is to be disallowed.

#### **194 Claims under section 192(1): general provisions**

- (1) A claim under section 192(1) may be made—
- (a) by the guarantor company,
  - (b) if there are two or more guarantor companies, by those companies acting together, or
  - (c) by the issuing company.
- (2) A claim made under section 192(1) by the issuing company is to be taken to be made on behalf of the guarantor company or companies.
- (3) Sections 175 to 177 apply in relation to a claim under section 192(1) made by or on behalf of any person or persons as they apply in relation to a claim under section 174 made by the disadvantaged person, but taking—
- (a) references in sections 176 and 177 to the advantaged person as references to the issuing company, and
  - (b) the reference in section 177 to the disadvantaged person as a reference to the guarantor company or companies.

## **CHAPTER 6**

### **BALANCING PAYMENTS**

#### **195 Qualifying conditions for purposes of section 196**

- (1) Conditions A to D are “the qualifying conditions” for the purposes of section 196.
- (2) Condition A is that only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.
- (3) Condition B is that the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

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- (4) Condition C is that—
  - (a) a payment (the “balancing payment”) is made, or
  - (b) two or more payments (the “balancing payments”) are made, to the advantaged person by the disadvantaged person.
- (5) Condition D is that the sole or main reason for making that payment or those payments is that section 147(3) or (5) applies.

## **196 Balancing payments between affected persons: no charge to, or relief from, tax**

- (1) If each of the qualifying conditions (see section 195) is met, subsection (2) applies—
  - (a) to the balancing payment if, or so far as, its amount does not exceed the available compensating adjustment, or
  - (b) to the balancing payments if, or so far as, their total amount does not exceed the available compensating adjustment.
- (2) Any payment to which this subsection applies—
  - (a) is not to be taken into account in calculating profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (3) In subsection (1) “the available compensating adjustment” means the difference between PL1 and PL2 where—
  - PL1 is the profits and losses of the disadvantaged person calculated for tax purposes on the basis of the actual provision, and
  - PL2 is the profits and losses of the disadvantaged person as (or as they would be) calculated for tax purposes on a claim under section 174.
- (4) For the purposes of subsection (3), take PL1 or PL2—
  - (a) as a positive amount if it is an amount of profits, and
  - (b) as a negative amount if it is an amount of losses.
- (5) In this section, the following expressions have the meaning given by section 195—
  - “the balancing payment” and “the balancing payments”, and
  - “the disadvantaged person”.

## **197 Qualifying conditions for purposes of section 198**

- (1) Conditions A to F are the qualifying conditions for the purposes of section 198.
- (2) Condition A is that one of the affected persons (“the issuing company”) is a company that has liabilities under a security issued by it.
- (3) Condition B is that those liabilities are to any extent the subject of a guarantee provided by a company (“the guarantor company”).
- (4) Condition C is that, in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5).
- (5) Condition D is that that reduction is required because of section 153.

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- (6) Condition E is that—
  - (a) a payment (the “balancing payment”) is made, or
  - (b) two or more payments (the “balancing payments”) are made,
 by the guarantor company to the issuing company.
- (7) Condition F is that the sole or main reasons for making that payment or those payments are—
  - (a) that section 147(3) or (5) applies because of section 153, or
  - (b) that sections 192 to 194 apply.
- (8) In subsections (2) and (9)(a) “security” includes securities not creating or evidencing a charge on assets.
- (9) For the purposes of subsection (2), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced,
 is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (2) to a security is to be read accordingly.
- (10) In subsection (3) the reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

## **198 Balancing payments by guarantor to issuer: no charge to, or relief from, tax**

- (1) If each of the qualifying conditions (see section 197) is met, subsection (2) applies to the balancing payments made by all of the guarantor companies if, or so far as, the total amount of those payments does not exceed the total amount of the reductions within section 197(4).
- (2) Payments to which this subsection applies—
  - (a) are not to be taken into account in calculating for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and
  - (b) are not for any purpose of the Corporation Tax Acts to be regarded as distributions.
- (3) In this section, the following expressions have the meaning given by section 197—
  - “the balancing payments”,
  - “the guarantor company”, and
  - “the issuing company”.

## **199 Pre-conditions for making election under section 200**

- (1) Conditions A to E are the pre-conditions for the purposes of section 200.

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- (2) Condition A is that both of the affected persons are companies.
- (3) Condition B is that only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.
- (4) Condition C is that the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (5) Condition D is that the actual provision is provision in relation to a security (the “relevant security”).
- (6) Condition E is that the capital market condition is met (see section 204).
- (7) In subsections (5) and (8)(a) “security” includes securities not creating or evidencing a charge on assets.
- (8) For the purposes of subsection (5), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (5) to a security is to be read accordingly.

## **200 Election to pay tax rather than make balancing payments**

- (1) If each of the pre-conditions (see section 199) is met, the disadvantaged person may make an election—
  - (a) to make no balancing payment within section 196 to the advantaged person in connection with section 147(3) or (5) applying because of section 152 in relation to the relevant security in a chargeable period, but
  - (b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 152 in relation to the relevant security.
- (2) Section 203 contains provision about the making and effect of elections under this section.
- (3) In this section, the following expressions have the meaning given by section 199—
  - “the advantaged person”,
  - “the disadvantaged person”, and
  - “the relevant security”.

## **201 Pre-conditions for making election under section 202**

- (1) Conditions A to E are the pre-conditions for the purposes of section 202.
- (2) Condition A is that both of the affected persons are companies.
- (3) Condition B is that only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

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- (4) Condition C is that the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (5) Condition D is that the actual provision is made or imposed by means of a series of transactions which include—
  - (a) the issuing of a security (“the relevant security”) by one of the affected persons (“the issuing company”), and
  - (b) the provision of a guarantee by the other affected person.
- (6) Condition E is that the capital market condition is met (see section 204).
- (7) In subsections (5) and (8)(a) “security” includes securities not creating or evidencing a charge on assets.
- (8) For the purposes of subsection (5), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (5) to a security is to be read accordingly.
- (9) In subsection (5) the reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

## **202 Election, in guarantee case, to pay tax rather than make balancing payments**

- (1) If each of the pre-conditions (see section 201) is met, the disadvantaged person may make an election—
  - (a) to make no balancing payment within section 198 to the advantaged person in connection with section 147(3) or (5) applying because of section 153 in relation to the relevant security in a chargeable period, but
  - (b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 153 in relation to the relevant security.
- (2) Section 203 contains provision about the making and effect of elections under this section.
- (3) In this section, the following expressions have the meaning given by section 201—
  - “the advantaged person”,
  - “the disadvantaged person”, and
  - “the relevant security”.

## **203 Elections under section 200 or 202**

- (1) In this section “election” means election under section 200 or 202.



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- (2) An election must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued.
- (3) An election is irrevocable.
- (4) An election has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods.
- (5) An election is of no effect if the Commissioners for Her Majesty's Revenue and Customs give the disadvantaged person a notice refusing to accept the election.
- (6) A notice under subsection (5) may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.  
  
(Paragraph 24 of Schedule 18 to FA 1998 makes provision about notices of enquiry in respect of company tax returns.)
- (7) If an election has effect in relation to an accounting period of the advantaged person, the tax mentioned in subsection (1)(b) of the section under which the election is made—
  - (a) is recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and
  - (b) is not recoverable from the advantaged person.
- (8) In this section—
 

“the advantaged person”, “the disadvantaged person” and “the relevant security”—

  - (a) in relation to an election under section 200, have the meaning given by section 199, and
  - (b) in relation to an election under section 202, have the meaning given by section 201, and

“company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.
- (9) For the purposes of subsections (2) and (4), if the relevant security was issued in a chargeable period beginning before 1st April 2004 it is to be treated as if it had been issued in the chargeable period beginning on that date.

## **204 Meaning of “capital market condition” in sections 199 and 201**

- (1) For the purposes of section 199(6) or 201(6), the capital market condition is met if—
  - (a) the actual provision forms part of a capital market arrangement,
  - (b) the capital market arrangement involves the issue of a capital market investment,
  - (c) the securities that represent the capital market investment are issued wholly or mainly to independent persons, and
  - (d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.
- (2) In this section—

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“capital market arrangement” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act),

“capital market investment” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act), and

“independent person” means a person—

- (a) who is not the disadvantaged person, and
- (b) who does not have a participatory relationship with either of the affected persons.

(3) In subsection (2) “the disadvantaged person”—

- (a) for the purposes of the application of this section in relation to section 199(6) has the meaning given by section 199(4), and
- (b) for the purposes of the application of this section in relation to section 201(6) has the meaning given by section 201(4).

(4) For the purposes of subsection (2), a person (“A”) who is a company has a “participatory relationship” with one of the affected persons (“B”) if—

- (a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or
- (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

## CHAPTER 7

### OIL-RELATED RING-FENCE TRADES

#### **205 Provision made or imposed between ring-fence trade and other activities**

(1) Subsections (2) to (4) apply if—

- (a) a person carries on an oil-related ring-fence trade (see section 206), and
- (b) any provision is made or imposed by the person as between—
  - (i) the oil-related ring-fence trade, and
  - (ii) any other activities carried on by the person.

(2) Chapters 1 and 3 to 6 (read in accordance with Chapters 2 and 8) apply in relation to the provision as if—

- (a) the oil-related ring-fence trade, and the person's other activities, were carried on by two different persons,
- (b) the provision were made or imposed as between those two persons by means of a transaction,
- (c) those two persons were both controlled by the same person at the time when the provision was made or imposed, and
- (d) a potential advantage in relation to United Kingdom taxation were conferred by the provision on each of those two persons.

(3) Subsection (2) has effect subject to subsection (4).

(4) Chapters 1 and 3 to 6 apply in relation to the provision only if the effect of their applying is—

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- (a) that a larger amount is taken for tax purposes to be the amount of the profits of the oil-related ring-fence trade for any chargeable period, or
  - (b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of the oil-related ring-fence trade.
- (5) In subsection (4)(a), the reference to a larger amount includes, if there would not otherwise have been profits, an amount of more than nil.

## **206 Meaning of “oil-related ring-fence trade” in sections 205 and 218**

- (1) This section has effect for the interpretation of—
- (a) section 205, and
  - (b) in Part 5, section 218(2)(f).
- (2) Activities carried on by a person are an “oil-related ring-fence trade” carried on by that person if subsection (3) or (4) applies to the activities.
- (3) This subsection applies to the activities if—
- (a) they are carried on by the person as part of a trade, and
  - (b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 (oil-related activities), they are treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.
- (4) This subsection applies to the activities if—
- (a) they are carried on by the person as a trade, and
  - (b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 they would, if the person did carry on any other activities as part of the trade, be treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.

## **[<sup>F126</sup>206A Modification of basic rule where allowances restricted for certain expenditure**

- (1) This section applies where—
- (a) in a case to which section 165A(1) of CAA 2001 (restriction of allowances for decommissioning expenditure) applies, R's available qualifying expenditure is restricted under section 165B(2) or 165C of that Act, or
  - (b) in a case to which section 416ZC(1) of that Act (restriction of allowances for expenditure on site restoration) applies, R's qualifying expenditure is restricted under section 416ZD(2) or section 165C as applied by section 416ZD(4)(a) of that Act.
- (2) In calculating for tax purposes S's profits and losses in relation to the service provided by S to R, the amount which S is required to bring into account is an amount equal to R's expenditure (restricted as mentioned in subsection (1)(a) or (b)).
- (3) Section 147(3) and (5) do not apply to the extent that they are inconsistent with subsection (2).
- (4) In this section “R” and “S” have the meaning given by section 165A or 416ZC of CAA 2001 (as the case may be).]

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### Textual Amendments

**F126** S. 206A inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 32 para. 14](#)

## CHAPTER 8

### SUPPLEMENTARY PROVISIONS AND INTERPRETATION OF PART

#### *Unit trusts*

#### **207 Application of Part to unit trusts**

- (1) This Part has effect as follows.
- (2) As if a unit trust scheme were a company that is a body corporate.
- (3) As if the rights of the unit holders under a unit trust scheme were shares in the company that the scheme is deemed to be.
- (4) As if rights and powers of a person in the capacity of a person entitled to act for the purposes of a unit trust scheme were rights and powers of the scheme.
- (5) As if provision made or imposed as between—
  - (a) a person in the capacity of a person entitled to act for the purposes of a unit trust scheme, and
  - (b) another person,
 were made or imposed as between the scheme and that other person.

#### *Determinations requiring Commissioners' sanction*

#### **208 The determinations which require the Commissioners' sanction**

- (1) A determination requires the Commissioners' sanction if it—
  - (a) is a transfer-pricing determination made for any of the specified purposes, and
  - (b) is not excepted by section 209 from the requirement for the Commissioners' sanction.
- (2) In subsection (1) “transfer-pricing determination” means a determination of an amount to be brought into account for tax purposes in respect of any assumption made under section 147(3) or (5).
- (3) For the purposes of subsection (1), each of the following is a specified purpose—
  - (a) the giving of a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,
  - (b) the giving of a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,
  - (c) the giving of a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,

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- (d) the giving of a notice under section 30B(1) of TMA 1970 amending a partnership return,
  - (e) the making of an assessment under section 29 of TMA 1970,
  - (f) the making of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), and
  - (g) the making of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

## **209 Determinations exempt from requirement for Commissioners' sanction**

- (1) A transfer-pricing determination made for a purpose specified in section 208(3) (“the specified purpose”) does not require the Commissioners' sanction if—
- (a) an agreement about the matters to which the determination relates has been made between an officer and the person in whose case the determination is made,
  - (b) the agreement is in force at the relevant time, and
  - (c) the matters to which the agreement relates include the amount determined by the transfer-pricing determination.
- (2) For the purposes of subsection (1)(b)—
- (a) if the specified purpose is within section 208(3)(a) to (d), “the relevant time” is when the notice is given,
  - (b) if the specified purpose is within section 208(3)(e) or (f), “the relevant time” is when any notice of the assessment is given, and
  - (c) if the specified purpose is within section 208(3)(g), “the relevant time” is when any notice of the discovery determination is given.
- (3) For the purposes of subsection (1)(b), an agreement made between an officer and any person in relation to any matter is “in force” at any time if (and only if)—
- (a) the agreement is one that has been made or confirmed in writing,
  - (b) that time is after the end of the cooling-off period, and
  - (c) the person has not, before the end of the cooling-off period, served a notice on an officer stating that the person is repudiating or resiling from the agreement.
- (4) In subsection (3) “the cooling-off period” means—
- (a) if the agreement is made in writing, the 30 days beginning with the day when the agreement is made, and
  - (b) in any other case, the 30 days beginning with the day when the agreement is confirmed in writing.
- (5) For the purposes of subsections (3) and (4), an agreement made between an officer and any person is “confirmed in writing” if an officer serves on the person a notice in writing—
- (a) stating that the agreement has been made, and
  - (b) setting out the terms of the agreement.
- (6) In this section—

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“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,

“officer” means officer of Revenue and Customs, and

“transfer-pricing determination” has the meaning given by section 208(2).

## **210 The requirement for the Commissioners' sanction**

- (1) Subsection (2) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(a) to (d) if, under section 208(1), the determination requires the Commissioners' sanction.
- (2) If the closure notice, or notice under section 30B(1) of TMA 1970, is given to a person—
  - (a) without the determination, so far as it is taken into account in the notice, having been approved by the Commissioners, or
  - (b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,
 the notice has effect as if given in the terms (if any) in which it would have been given had the determination not been taken into account.
- (3) Subsection (4) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(e) to (g) if, under section 208(1), the transfer-pricing determination requires the Commissioners' sanction.
- (4) If notice of the assessment, or notice of the discovery determination, is given to a person—
  - (a) without the transfer-pricing determination, so far as it is taken into account in the assessment or discovery determination, having been approved by the Commissioners, or
  - (b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,
 the assessment or discovery determination has effect as if made (and notified) in the terms (if any) in which it would have been made had the transfer-pricing determination not been taken into account.
- (5) For the purposes of subsections (2) and (4), the Commissioners' approval of a transfer-pricing determination requiring their sanction—
  - (a) must be given specifically in relation to the case concerned and must apply to the amount determined, but
  - (b) subject to that, may be given by the Commissioners (either before or after the determination is made) in any such form or manner as the Commissioners may determine.

[<sup>F127</sup>(6) In this section—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs, and

“transfer-pricing determination” has the meaning given by section 208(2).]

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### Textual Amendments

**F127** S. 210(6) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by [Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), 4(4)

## 211 Restriction of right to appeal against Commissioners' approval

- (1) In subsection (2)—
- “appeal” means an appeal by virtue of any provision of—
    - (a) TMA 1970, or
    - (b) Schedule 18 to FA 1998 (company tax returns and related matters), and“approved determination” means a determination that, for the purposes of section 210(2) or (4), has been approved by the Commissioners.
- (2) The matters that may be questioned on so much of an appeal as relates to an approved determination do not include the Commissioners' approval.
- (3) Subsection (2) does not apply so far as the grounds for questioning the approval are the same as the grounds for questioning the determination.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

### *Appeals*

## 212 Appeals

- (1) The appeals within this subsection are—
- (a) an appeal under section 31 of, or Schedule 1A to, TMA 1970,
  - (b) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company's return, and
  - (c) an appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.
- (2) Subsection (3) applies so far as the question in dispute on an appeal within subsection (1)—
- (a) is or involves a determination of whether this Part has effect, and
  - (b) relates to any provision made or imposed as between two persons each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (3) If this subsection applies—
- (a) each of the persons as between whom the actual provision was made or imposed is entitled to be a party in any proceedings,
  - (b) the tribunal is to determine the question separately from any other question in the proceedings, and
  - (c) the tribunal's determination on the question has effect as if made in an appeal to which each of those persons was a party.
- (4) In subsection (1)(c)—

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“discovery assessment” means a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 that Schedule), and

“discovery determination” means a discovery determination under paragraph 41 of that Schedule.

*Effect of Part on capital allowances and chargeable gains*

### 213 Capital allowances

- (1) Nothing in this Part is to be read as affecting the calculation of the amount of any capital allowance or balancing charge made under CAA 2001.
- (2) Subsection (1) does not apply in relation to claims under section 174.
- [<sup>F128</sup>(3) But a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165E or 416ZC to 416ZE of CAA 2001.]

#### Textual Amendments

**F128** S. 213(3) inserted (with effect in accordance with Sch. 32 para. 16 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 32 para. 15](#)

### 214 Chargeable gains

- (1) Nothing in this Part is to be read as affecting the calculation in accordance with TCGA 1992 of the amount of any chargeable gain or allowable loss.
- (2) Nothing in this Part requires the profits and losses of any person to be calculated for tax purposes as if, in the person's case, instead of income or losses to be brought into account in connection with the taxation of income, there were gains or losses to be brought into account in accordance with TCGA 1992.
- (3) Subsections (1) and (2) do not apply in relation to claims under section 174.

*Adjustments*

### 215 Manner of making adjustments to give effect to Part

Any adjustments required to be made under this Part may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

*Definitions*

### 216 Meaning of “the relevant activities”

- (1) In this Part “the relevant activities”, in relation to a person (“A”) who is one of the persons as between whom any provision is made or imposed, means activities that—
  - (a) are within subsection (2), and
  - (b) are not within subsection (3).



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- (2) The activities within this subsection are those of A's activities that comprise the activities in the course of which, or with respect to which, that provision is made or imposed.
- (3) The activities within this subsection are any of A's activities carried on—
  - (a) separately from the activities mentioned in subsection (2), or
  - (b) for the purposes of a different part of A's business.

## **217 Meaning of “control” and “firm”**

- (1) References in this Part to a person controlling a body corporate or firm are to be read in accordance with section 1124 of CTA 2010.
- (2) Subsection (1) has effect subject to subsection (4) and section 205(2).
- (3) Subsection (4) applies if—
  - (a) the actual provision is made or imposed by or in relation to a sale of oil,
  - (b) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company (“the producer”) which, although it may be the seller, is not the buyer, and
  - (c) at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier, at least 20% of the producer's ordinary share capital is owned directly or indirectly by one or more of the buyer and the companies (if any) that are linked to the buyer.
- (4) If this subsection applies, this Part has effect in relation to the actual provision as if—
  - (a) the buyer and the seller, and
  - (b) the producer, if it is not the seller,were all controlled by the same person at the time of the making or imposition of the actual provision.
- (5) For the purposes of subsection (3)(c), two companies are “linked” if—
  - (a) one is under the control of the other, or
  - (b) both are under the control of the same person or persons.
- (6) For the purposes of subsection (3)—
  - (a) any question whether ordinary share capital is owned directly or indirectly by a company is to be decided as for Chapter 3 of Part 24 of CTA 2010, and
  - (b) rights to extract oil are to be taken to be exercisable by a company even if they are exercisable by that company only jointly with another company or two or more other companies.
- (7) In this section “oil” includes any mineral oil or relative hydrocarbon oil, as well as natural gas.
- (8) In this Part persons carrying on a trade, profession or other business in partnership are referred to collectively as a “firm”.

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## PART 5

### ADVANCE PRICING AGREEMENTS

#### 218 Meaning of “advance pricing agreement”

- (1) In this Part “advance pricing agreement” means a written agreement that—
- (a) is made by the Commissioners with any person (“A”) as a consequence of an application by A under section 223,
  - (b) relates to one or more of the matters mentioned in subsection (2), and
  - (c) declares that it is an agreement made for the purposes of this section.
- (2) Those matters are—
- (a) if A is not a company, the attribution of income to a branch or agency through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,
  - (b) if A is a company, the attribution of income to a permanent establishment through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,
  - (c) the attribution of income to any permanent establishment of A's, wherever situated, through which A has been carrying on, or is proposing to carry on, any business,
  - (d) the extent to which income that has arisen or may arise to A is to be taken for any purpose to be income arising in a country or territory outside the United Kingdom,
  - (e) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between A and any associate (see section 219) of A's, and
  - (f) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between an oil-related ring-fence trade carried on by A (see section 206) and any other activities carried on by A.

#### 219 Meaning of “associate” in section 218(2)(e)

- (1) This section applies for the purposes of section 218(2)(e).
- (2) Two persons are associates in relation to provision made or imposed as between them if at the time of the making or imposition of the provision—
- (a) one of them is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of the two persons.
- (3) Two persons are also associates in relation to any provision if section 217(4) (which applies to provision made or imposed in connection with sales of oil) requires the persons to be treated as controlled by the same person at the time of the making or imposition of that provision.
- (4) For the interpretation of subsection (2), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (2) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

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## **220 Effect of agreement on party to it**

- (1) Subsection (2) applies if a chargeable period is one to which an advance pricing agreement relates.
- (2) The Tax Acts have effect in relation to the chargeable period as if, in the case of the person with whom the Commissioners made the agreement, questions relating to the matters mentioned in section 218(2) are to be determined—
  - (a) in accordance with the agreement, and
  - (b) without reference to the provisions in accordance with which they would otherwise be determined.
- (3) Subsection (2) is subject to—
  - subsections (4) and (5), and
  - section 221.
- (4) A question is to be determined as mentioned in subsection (2) only so far as the agreement provides for the question to be determined in that way.
- (5) In the case of so much of a question as—
  - (a) relates to any matter mentioned in paragraph (e) or (f) of section 218(2), and
  - (b) is not comprised in a question that relates to a matter within another paragraph of section 218(2),reference to a provision is capable of being excluded under subsection (2) by an advance pricing agreement only if the provision is in Part 4.

## **221 Effect of revocation of agreement or breach of its conditions**

- (1) An advance pricing agreement does not have effect in accordance with section 220(2) in relation to any determination of a question if any of conditions A, B and C is met.
- (2) Condition A is that a time to which the question relates is after a time as from which an officer has revoked the agreement in accordance with the agreement's terms.
- (3) Condition B is that the question relates to a time after, or in relation to which, there has been a failure by a party to the agreement to comply with a significant provision of the agreement.
- (4) Condition C is that the question relates to a matter as respects which a key condition has not been met or is no longer met.
- (5) A provision of the agreement is “significant” for the purposes of subsection (3) if compliance with that provision is, under the terms of the agreement, to be a condition of the agreement's having effect.
- (6) Any other condition that, under the terms of the agreement, is to be a condition of the agreement's having effect is a “key condition” for the purposes of subsection (4).

## **222 Effect of agreement on non-parties**

- (1) Subsections (2), (5) and (6) apply if—
  - (a) an advance pricing agreement has effect in relation to any provision (“the actual provision”) made or imposed as between any person (“A”) and another (“B”), and

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- (b) section 220(2) has the effect in A's case of requiring a question relating to the actual provision to be determined in accordance with the agreement rather than by reference to rules which would otherwise be applicable because of Part 4.
- (2) The provisions mentioned in subsection (3) have effect in B's case on the assumption that any question within subsection (4) is to be determined, to the same extent as in A's case, by reference to the agreement.
- (3) The provisions are—
  - sections 174 to 178 (transfer pricing: claim by disadvantaged person), and
  - sections 188 and 189 (transfer pricing: adjustment of double taxation relief if claim made).
- (4) The questions are—
  - (a) whether A is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and
  - (b) what constitutes the arm's length provision in relation to the actual provision.
- (5) Subsection (2) has effect subject to any advance pricing agreement made between the Commissioners and B.
- (6) Any assumptions to be made because of the agreement are “advance-pricing-agreement assumptions” for the purposes of paragraph (b) of the definition in section 185(5) of “transfer-pricing determination”.

### **223 Application for agreement**

- (1) For the purposes of section 218(1)(a), an application by a person (“A”) is an application under this section if it complies with subsections (2) to (5).
- (2) It must be an application to the Commissioners for the clarification by agreement of the effect in A's case of provisions by reference to which questions relating to any one or more of the matters mentioned in section 218(2) are to be, or might be, determined.
- (3) It must set out A's understanding of what would in A's case be the effect, in the absence of any agreement, of the provisions in relation to which clarification is sought.
- (4) It must set out the respects in which it appears to A that clarification is required in relation to those provisions.
- (5) It must set out how A proposes that matters should be clarified in a manner consistent with the understanding mentioned in subsection (3).

### **224 Provision in agreement about years ended or begun before agreement made**

- (1) An advance pricing agreement may contain provision relating to chargeable periods ending before the agreement is made, subject to subsection (2).
- (2) An advance pricing agreement may not contain provision relating to chargeable periods ending before 27 July 1999.
- (3) If an advance pricing agreement—
  - (a) relates to a chargeable period beginning or ending before the agreement is made, and

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- (b) provides for the manner in which adjustments are to be made for tax purposes in consequence of the agreement,  
the adjustments are to be made for those purposes in the manner provided for in the agreement.

## **225 Modification and revocation of agreement**

- (1) Subsection (2) applies if an advance pricing agreement provides for the modification, or revocation, of the agreement—
  - (a) by the Commissioners, or
  - (b) by an officer.
- (2) The agreement may provide for the modification or revocation to take effect as from such time as the Commissioners or officer may determine.
- (3) A time determined under subsection (2) may be (but need not be) a time before the modification is made or the agreement is revoked.

## **226 Annulment of agreement for misrepresentation**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that the Commissioners and any person (“A”) have at any time purported to enter into an advance pricing agreement.
- (3) Condition B is that, before that time, A fraudulently or negligently provided the Commissioners with information which was false or misleading.
- (4) Condition C is that the information was so provided—
  - (a) for or in connection with the application to the Commissioners for the making of the agreement, or
  - (b) otherwise in connection with the preparation of the agreement.
- (5) Condition D is that the Commissioners have notified A that the agreement is nullified by reason of the misrepresentation.
- (6) The agreement is to be treated as never made.

## **227 Penalty for misrepresentation in connection with agreement**

A person is liable to a penalty of not more than £10,000 if the person fraudulently or negligently makes a false or misleading statement to the Commissioners or an officer—

- (a) for or in connection with any application to the Commissioners for them to enter into an advance pricing agreement, or
- (b) otherwise in connection with the preparation of an advance pricing agreement.

## **228 Party to agreement: duty to provide information**

A party to an advance pricing agreement must provide the Commissioners from time to time with all reports and other information that the party may be required to provide—

- (a) under the agreement, or
- (b) as a result of a request made by an officer in accordance with the agreement.

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## 229 Modifications of agreement for double taxation purposes

- (1) Subsection (2) applies if a mutual agreement made under and for the purposes of any double taxation arrangements is not consistent with the terms of an advance pricing agreement.
- (2) The Commissioners must ensure that the advance pricing agreement is modified so far as may be necessary for enabling effect to be given to the mutual agreement in relation to the subject-matter of the advance pricing agreement.
- (3) The Commissioners may comply with subsection (2) by exercising powers conferred on them by the advance pricing agreement or otherwise.
- (4) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

## 230 Interpretation of Part: meaning of “Commissioners” and “officer”

In this Part—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs, and

“officer” means an officer of Revenue and Customs.

### F129 PART 6

#### TAX ARBITRAGE

#### Textual Amendments

**F129** Pt. 6 omitted (with effect in relation to accounting periods beginning on or after 1.1.2017 in accordance with [Sch. 10 para. 22](#) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 15](#); and ss. 257, 257 so far as continuing to have effect are amended (with effect in accordance with [Sch. 15 para. 44](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 15 paras. 41, 42](#)

### F130 PART 6A

#### HYBRID AND OTHER MISMATCHES

#### Textual Amendments

**F130** Pt. 6A inserted (with effect in accordance with [Sch. 10 paras. 18-21](#) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 10 para. 1](#)

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## CHAPTER 1

### INTRODUCTION

#### 259A Overview of Part

- (1) This Part has effect for the purposes of counteracting certain cases that it is reasonable to suppose would otherwise give rise to—
  - (a) a deduction/non-inclusion mismatch, or
  - (b) a double deduction mismatch.
- (2) A deduction/non-inclusion mismatch arises where an amount is deductible from a person's income—
  - (a) without a corresponding amount of ordinary income arising to another person, or
  - (b) where an amount of ordinary income does arise to a person but is under taxed.
- (3) A double deduction mismatch arises where—
  - (a) an amount is deductible from more than one person's income, or
  - (b) an amount is deductible from a person's income for the purposes of more than one tax.
- (4) The cases with which this Part is concerned involve—
  - (a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,
  - (b) hybrid entities,
  - (c) companies with permanent establishments, or
  - (d) dual resident companies.
- (5) This Part counteracts mismatches that would otherwise arise by making certain adjustments to a person's treatment for corporation tax purposes.
- (6) Chapter 2 contains some key definitions for the purposes of this Part, see in particular—
  - (a) section 259B which provides that “tax” means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,
  - (b) section 259BB which defines “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer”, “payee”, and “payee jurisdiction”,
  - (c) section 259BC which defines “ordinary income” and “taxable profits”, in relation to taxes other than the CFC charge and foreign CFC charges,
  - (d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges,
  - (e) section 259BE which defines “hybrid entity” and other related terms, and
  - (f) section 259BF which defines “permanent establishment”.
- (7) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.

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- (8) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.
- (9) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.
- (10) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising in relation to internal transfers of money or money's worth made, or treated as made, by a multinational company's permanent establishment in the United Kingdom to the territory in which the company is resident for tax purposes.
- (11) Chapter 7 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.
- (12) Chapter 8 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a multinational company.
- (13) Chapter 9 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.
- (14) Chapter 10 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies or relevant multinational companies.
- (15) Chapter 11 contains provision about imported mismatches.
- (16) Chapter 12 contains provision—
  - (a) for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable, and
  - (b) for deductions from taxable total profits to be made where a relevant deduction has been denied under certain provisions of this Part and amounts of ordinary income arise later than is permitted.
- (17) Chapter 13 contains anti-avoidance provision.
- (18) Chapter 14 contains definitions and other provision about the interpretation of this Part.
- (19) Each of Chapters 3 to 10 contains provision specifying that some or all of this Part (and any corresponding provision under the law of a territory outside the United Kingdom) is to be disregarded when determining whether a mismatch arises for the purposes of that Chapter and, if so, in what amount, see—
  - (a) section 259CA(4) and (5),
  - (b) section 259DA(5),
  - (c) section 259EA(5) and (6),
  - (d) section 259FA(4), (5) and (6),
  - (e) section 259GA(5) and (6),
  - (f) section 259HA(6) and (7),
  - (g) section 259IA(2) and (3), and



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- (h) section 259JA(5).
- (20) The effect of the provisions mentioned in subsection (19) is that Chapters 3 to 10 (or any corresponding provision under the law of a territory outside the United Kingdom) have effect in the following sequence—
- (a) Chapter 4,
  - (b) Chapter 3,
  - (c) Chapter 5,
  - (d) Chapter 6,
  - (e) Chapter 7,
  - (f) Chapter 8,
  - (g) Chapter 9, and
  - (h) Chapter 10.

## CHAPTER 2

### KEY DEFINITIONS

#### *Meaning of “tax”*

#### **259B “Tax” means certain taxes on income and includes foreign tax etc**

- (1) In this Part “tax” means—
- (a) income tax,
  - (b) the charge to corporation tax on income,
  - (c) diverted profits tax,
  - (d) the CFC charge,
  - (e) foreign tax, or
  - (f) a foreign CFC charge.
- (2) In subsection (1) “foreign tax” means a tax chargeable under the law of a territory outside the United Kingdom so far as it—
- (a) is charged on income and corresponds to United Kingdom income tax, or
  - (b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.
- (3) A tax <sup>F131</sup>is outside the scope of subsection (2) if it—
- (a) is chargeable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

[ The payment of any withholding tax in respect of any amount is to be ignored for the <sup>F132</sup>(3A) purposes of this Part.]

- (4) In this Part—
- “CFC” and “the CFC charge” have the same meaning as in Part 9A (see section 371VA);
- “foreign CFC charge” means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a “foreign CFC” is to be read accordingly).

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- [ In any case where—
- <sup>F133</sup>(5) (a) a person is resident in a territory outside the United Kingdom generally for the purposes of the law of the territory or for particular purposes under that law, and
- (b) the law of the territory has no provision for a person to be resident for tax purposes under its law,
- any reference in Chapter 8 or 11 to a person's residence for tax purposes in the territory is to be read as a reference to the person's residence as mentioned in paragraph (a).]

#### Textual Amendments

**F131** Words in s. 259B(3) substituted (with effect in accordance with s. 24(10) of the amending Act) by

[Finance \(No. 2\) Act 2017 \(c. 32\), s. 24\(2\)](#)

**F132** S. 259B(3A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 7 paras. 2\(a\), 19\(4\)](#)

**F133** S. 259B(5) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 7 para. 2\(b\)](#)

*Equivalent provision to this Part under foreign law*

#### **259BA** References to equivalent provision to this Part under the law of a territory outside the United Kingdom

- (1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—
- (a) this Part, or
- (b) a provision of this Part,
- is to be read in accordance with subsection (2).
- (2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—
- (a) is based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development (“OECD”) on 5 October 2015 or any replacement or supplementary publication, and
- (b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.
- (3) In paragraph (a) of subsection (2) “replacement or supplementary publication” means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

*Payments and quasi-payments etc*

#### **259BB** Meaning of “payment”, “quasi-payment”, “payer”, “payee” etc

- (1) In this Part “payment” means any transfer—
- (a) of money or money's worth directly or indirectly from one person (“the payer”) to one or more other persons, and

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- (b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) an amount (a “relevant deduction”) may be deducted from the payer's income for a taxable period (the “payment period”) for the purposes of calculating the payer's taxable profits.
- (2) For the purposes of this Part, there is a “quasi-payment”, in relation to a taxable period (the “payment period”) of a person (“the payer”), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom)—
  - (a) an amount (a “relevant deduction”) may be deducted from the payer's income for that period for the purposes of calculating the payer's taxable profits, and
  - (b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.
- (3) But a quasi-payment does not arise under subsection (2) if—
  - (a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and
  - (b) the circumstances giving rise to the relevant deduction do not include any economic rights, in substance, existing between the payer and a person mentioned in subsection (2)(b).
- (4) The assumptions are that (so far as would not otherwise be the case)—
  - (a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,
  - (b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and
  - (c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances—
    - (i) are, under the law of the payer jurisdiction, resident in that jurisdiction for tax purposes, and
    - (ii) carry on a business, in connection with which those circumstances arise, in the payer jurisdiction.
- (5) In this Part—
  - (a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and
  - (b) references to a quasi-payment being made are to those circumstances arising.
- (6) In this Part “payee” means—
  - (a) in the case of a payment, any person—
    - (i) to whom the transfer is made as mentioned in subsection (1)(a), or
    - (ii) to whom an amount of ordinary income arises as a result of the payment, and
  - (b) in the case of a quasi-payment, any person—
    - (i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or
    - (ii) to whom an amount of ordinary income arises as a result of the quasi-payment.
- (7) For the purposes of this Part, in the case of a quasi-payment, the payer is “also a payee” if—

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- (a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,
  - (b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and
  - (c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).
- (8) In this section “payer jurisdiction” means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.
- (9) In this Part “payee jurisdiction”, in relation to a payee, means a territory in which—
- (a) the payee is resident for tax purposes under the law of that territory, or
  - (b) the payee has a permanent establishment.

### *Ordinary income*

#### **259BC The basic rules**

- (1) This section has effect for the purposes of this Part.
- (2) “Ordinary income” means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged (“taxable profits”).
- (3) But an amount of income is not brought into account for those purposes to the extent that <sup>F134</sup>—
- (a) it is charged to the relevant tax at a nil rate, or
  - (b) it is excluded, reduced or offset by any exemption, exclusion, relief, or credit—
    - (i) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or
    - (ii) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.]
- (4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is “ordinary income”.
- (5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is “ordinary income” is proportionally reduced.
- (6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—
- (a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and
  - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,
- but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.
- (7) In subsection (6) “qualifying loss relief” means—

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- (a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or
  - (b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax, (and in paragraph (b) “relevant tax loss” means a loss that might be used as mentioned in paragraph (a)).
- (8) References to an amount of ordinary income being “included in” taxable profits are to that amount being brought into account for the purposes of calculating those profits.
- (9) In this section “relevant tax” means a tax other than the CFC charge or a foreign CFC charge.
- (10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

#### Textual Amendments

**F134** Words in s. 259BC(3) substituted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 para. 3](#)

### 259BD Chargeable companies in respect of CFCs and foreign CFCs

- (1) This section has effect for the purposes of this Part.
- (2) Subsections (3) to (7) apply where an amount of income arises to an entity (“C”) that is a CFC, a foreign CFC or both and all or part of that amount (the “relevant income”)—
- (a) is not ordinary income of C under section 259BC, or
  - (b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and—
    - (i) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but
    - (ii) under taxed.
- (3) The following steps determine whether, and to what extent, the relevant income is “ordinary income” of a chargeable company in relation to the CFC charge or a foreign CFC charge.
- Step 1* Determine—
- (a) whether any of the relevant income is brought into account in calculating C's chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
  - (b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is “ordinary income” of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section—

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“relevant chargeable profits” are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account;

“relevant charge” means a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits.

*Step 2* In relation to each relevant charge, determine the proportion of C's relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C's relevant chargeable profits for the purposes of a relevant charge are apportioned is a “relevant chargeable company”.

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is “ordinary income” of a chargeable company and no further steps are to be taken.

*Step 3* In relation to each relevant chargeable company, determine what is the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned.

That proportion of that income is “ordinary income” of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the “appropriate proportion”, in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

- (4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).
- (5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are “taxable profits” of that company for the taxable period for which the charge is charged on it by reference to those profits.
- (6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is “included in” those taxable profits.
- (7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).
- (8) For the purposes of subsection (2)(b), an amount of ordinary income is “under taxed” if the highest rate at which tax is charged, for C's taxable period, on the taxable profits in which the amount is included, taking into account on a just and reasonable basis any credit for underlying tax, is less than C's full marginal rate for that period.
- (9) In subsection (8)—
  - (a) C's “full marginal rate” means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument, and
  - (b) “credit for underlying tax” means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment mentioned in subsection (2)(b).

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- (10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.
- (11) Subsection (12) applies for the purposes of step 1 in subsection (3), if—
- (a) the amount of income arising to C mentioned in subsection (2)—
    - (i) is not all relevant income, and
    - (ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and
  - (b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.
- (12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (2) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.
- [ For the purposes of subsection (2)—
- <sup>F135</sup>(12A) (a) a qualifying CFC amount arising to C is treated as an amount of relevant income,
- (b) a qualifying CFC amount arising to C, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than C’s full marginal rate for that period,
  - (c) in determining C’s “full marginal rate”, the reference to the taxable profits mentioned in subsection (9) includes any qualifying CFC amount, and
  - (d) in determining a “credit for underlying tax”, the reference to profits includes any qualifying CFC amount.
- (12B) For the purposes of subsection (12A) a “qualifying CFC amount” means an amount arising to C which is brought into account in calculating chargeable profits for the purposes of a foreign CFC charge.
- (12C) But an amount is not regarded for this purpose as brought into account so far as—
- (a) the amount is excluded, reduced or offset for the purposes of the foreign CFC charge by any exemption, exclusion, relief or credit that—
    - (i) applies specifically to all or part of the amount (as opposed to amounts brought into account for those purposes generally), or
    - (ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or
  - (b) the sum charged for the purposes of the foreign CFC charge is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).]

(13) In this section—

“chargeable company”—

    - (a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

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- (b) in relation to a foreign CFC charge, means an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;
- “chargeable profits”—
- (a) in relation to the CFC charge, has the same meaning as in that Part (see that section), and
- (b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part <sup>F136</sup>(including any qualifying CFC amount within the meaning given by subsection (12B));
- “hybrid transfer arrangement” has the meaning given by section 259DB.

#### Textual Amendments

**F135** Ss. 259BD(12A)-(12C) inserted (15.9.2016 retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 7 paras. 7\(2\), 19\(4\)](#)

**F136** Words in s. 259BD(13) inserted (15.9.2016 retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 7 paras. 7\(3\), 19\(4\)](#)

#### *Hybrid entity etc*

#### **259BE Meaning of “hybrid entity”, “investor” and “investor jurisdiction”**

- (1) For the purposes of this Part, an entity is “hybrid” if it meets conditions A and B.
- (2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.
- (3) Condition B is that—
- (a) some or all of the entity's income or profits are treated (or would be if there were any) for the purposes of a tax charged under the law of any territory, as the income or profits of a person or persons other than the person mentioned in subsection (2), or
- (b) under the law of a territory other than the one mentioned in subsection (2), the entity is not regarded as a distinct and separate person to an entity or entities that are distinct and separate persons under the law of the territory mentioned in that subsection.
- (4) For the purposes of this Part—
- (a) where subsection (3)(a) applies, a person who is treated as having the income or profits of the hybrid entity is an “investor” in it,
- (b) where subsection (3)(b) applies, an entity that—
- (i) is regarded as a distinct and separate person to the hybrid entity under the law of the territory mentioned in subsection (2), but
- (ii) is not regarded as a distinct and separate person to the hybrid entity under the law of another territory,
- is an “investor” in the hybrid entity, and
- (c) any territory under the law of which an investor is within the charge to a tax is an “investor jurisdiction” in relation to that investor.



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### *Permanent establishments*

#### **259BF Meaning of “permanent establishment”**

- (1) In this Part “permanent establishment” means anything that is—
  - (a) a permanent establishment of a company within the meaning of the Corporation Tax Acts (see section 1119 of CTA 2010), or
  - (b) within any similar concept under the law of a territory outside the United Kingdom.
- (2) A concept is not outside the scope of subsection (1)(b) by reason only that it is not based on Article 5 of a Model Tax Convention on Income and Capital published by the Organisation for Economic Cooperation and Development.

## **CHAPTER 3**

### HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

#### *Introduction*

#### **259C Overview of Chapter**

- (1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259CA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259CB defines “hybrid or otherwise impermissible deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259CC contains definitions of certain terms used in section 259CB.
- (6) Section 259CD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (7) Section 259CE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.
- (8) See also—
  - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
  - (b) section 259N for the meaning of “financial instrument”.

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### *Application of Chapter*

#### **259CA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to D are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.
- (3) Condition B is that—
  - (a) the payer is within the charge to corporation tax for the payment period, or
  - (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (4) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).
- (5) The provisions are—
  - (a) this Chapter and Chapters 5 to 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (6) Condition D is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),
  - (b) the payer and a payee are related (see section 259NC) at any time in the period—
    - (i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and
    - (ii) ending with the last day of the payment period, or
  - (c) the financial instrument, or any arrangement connected with it, is a structured arrangement.
- (7) The financial instrument, or an arrangement connected with it, is a “structured arrangement” if it is reasonable to suppose that—
  - (a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or
  - (b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (9) Sections 259CD (cases where the payer is within the charge to corporation tax for the payment period) and 259CE (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

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## **259CB Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent**

- (1) There is a “hybrid or otherwise impermissible deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.
- (2) Case 1 applies where—
  - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
  - (b) all or part of that excess arises by reason of the terms, or any other feature, of the financial instrument.
- [<sup>F137</sup>(3) So far as the excess arises—
  - (a) by reason of a relevant debt relief provision, or
  - (b) in relevant debt relief circumstances,it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless).]
- [ So far as the excess arises by reason of an interest distribution designation, it is to  
<sup>F138</sup>(3A) be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless of that designation).]
- (4) Subject to [<sup>F139</sup>subsections (3), (3A) and] (9), for the purposes of subsection (2)(b)—
  - (a) it does not matter whether the excess or part arises for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have arisen for that other reason regardless of the terms, or any other feature, of the financial instrument), and
  - (b) an excess or part of an excess is to be taken to arise by reason of the terms, or any other feature, of the financial instrument (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (5) and (6)), it could arise by reason of the terms, or any other feature, of the financial instrument.
- (5) These are the “relevant assumptions”—
  - (a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;
  - (b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;
  - (c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—
    - (i) resident for the purposes of a tax charged under the law of that territory, or
    - (ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

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assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

- (6) Where the relevant assumption in subsection (5)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (4)(b)—
- (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
  - (b) section 690 of that Act (derivative contracts for unallowable purposes);
  - (c) Part 4 (transfer pricing);
  - (d) this Part;
  - [<sup>F140</sup>(e) Part 10 (corporate interest restriction).]
- (7) Case 2 applies where there are one or more amounts of ordinary income (“under-taxed amounts”) that—
- (a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
  - (b) are under taxed by reason of the terms, or any other feature, of the financial instrument.
- (8) Subject to subsection (9), for the purposes of subsection (7)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have been under taxed for that other reason regardless of the terms, or any other feature, of the financial instrument).
- (9) For the purposes of this section disregard—
- (a) any excess or part of an excess mentioned in subsection (2), and
  - (b) any under-taxed amount,
- that arises as a result of a payee being a relevant investment fund (see section 259NA).
- (10) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (11) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$(UTA \times (FMR - R)) FMR$$

where—

“UTA” is the under-taxed amount;

“FMR” is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

“R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

- (12) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

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- (13) See section 259CC for the meaning of “permitted taxable period”, “relevant debt relief provision” and “under taxed”.

#### Textual Amendments

- F137** S. 259CB(3) substituted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 3, 36](#)  
**F138** S. 259CB(3A) inserted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 7\(a\), 36](#)  
**F139** Words in s. 259CB(4) substituted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 7\(b\), 36](#)  
**F140** S. 259CB(6)(e) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 18](#)

### 259CC Interpretation of section 259CB

- (1) This section has effect for the purposes of section 259CB.
- (2) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
- (a) the period begins before the end of 12 months after the end of the payment period, or
  - <sup>[F141]</sup>(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one).]
- (3) Each of these is a “relevant debt relief provision”—
- (a) section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account),
  - (b) section 357 of that Act (insolvent creditors),
  - (c) section 358 of that Act (exclusion of credits on release of connected companies' debts: general),
  - (d) section 359 of that Act (exclusion of credits on release of connected companies' debts during creditor's insolvency),
  - (e) section 361C of that Act (the equity-for-debt exception),
  - (f) section 361D of that Act (corporate rescue: debt released shortly after acquisition), and
  - (g) section 362A of that Act (corporate rescue: debt released shortly after connection arises).

<sup>[F142]</sup>(3A) To determine whether excess arises in “relevant debt relief circumstances” see sections 259NEB to 259NEF.]

<sup>[F143]</sup>(3B) An “interest distribution designation” means a designation made under regulation 5(2) of the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 ([S.I. 2009/2034](#)).]

- (4) An amount of ordinary income of a payee, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.
- (5) The payee's “full marginal rate” means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (4) could be charged on

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taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

- (6) A “credit for underlying tax” means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.
- [<sup>F144</sup>(7) A qualifying capital amount arising to a payee is treated as an amount of ordinary income of a payee and references to tax include any qualifying capital tax.
- (8) For the purposes of case 2—
- (a) a qualifying capital amount arising to a payee, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee’s full marginal rate for that period,
  - (b) in determining the payee’s “full marginal rate”, the reference to the taxable profits mentioned in subsection (4) includes any qualifying capital amount, and
  - (c) in determining a “credit for underlying tax”, the reference to profits includes any qualifying capital amount.
- (9) If the rate at which a qualifying capital tax is charged on a qualifying capital amount of a payee exceeds the rate at which tax would be charged on an amount of income of the payee, the excess is to be ignored.
- (10) For the purposes of subsections (7) to (9) a “qualifying capital amount” means an amount of a capital nature on which a qualifying capital tax is charged.
- (11) A qualifying capital tax is not regarded for this purpose as charged on an amount so far as—
- (a) the amount is excluded, reduced or offset for the purposes of the tax by any exemption, exclusion, relief or credit that—
    - (i) applies specifically to all or part of the amount (as opposed to amounts of a capital nature generally), or
    - (ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or
  - (b) the tax is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).
- (12) For the purposes of subsections (7) to (11) a “qualifying capital tax” means—
- (a) capital gains tax or the charge to corporation tax in respect of chargeable gains, or
  - (b) any tax chargeable under the law of a territory outside the United Kingdom that corresponds to a United Kingdom tax mentioned in paragraph (a),
- but does not include any tax chargeable at a nil rate.]

#### Textual Amendments

**F141** S. 259CC(2)(b) substituted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 24\(3\)\(13\)](#)

**F142** S. 259CC(3A) inserted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 4, 36](#)

**F143** S. 259CC(3B) inserted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 8, 36](#)

**F144** S. 259CC(7)-(12) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 8, 19\(4\)](#)

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### Counteraction

#### **259CD Counteraction where the payer is within the charge to corporation tax for the payment period**

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

#### **259CE Counteraction where a payee is within the charge to corporation tax**

- (1) This section applies in relation to a payee where—
  - (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
    - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD does not fully counteract that mismatch if (and only if)—
  - (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
  - (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4), or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259CD, and
    - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

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- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
- (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
  - (b) to whom any under-taxed amounts (within the meaning given by section 259CB(7)) arise, and
  - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means—
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

## CHAPTER 4

### HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **259D Overview of Chapter**

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259DA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259DB defines “hybrid transfer arrangement”.
- (5) Section 259DC defines “hybrid transfer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (6) Section 259DD contains definitions of certain terms used in section 259DC.
- (7) Section 259DE contains provision in connection with excluding mismatches from counteraction by the Chapter where they arise as a consequence of the tax treatment of a financial trader.
- (8) Section 259DF contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.



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- (9) Section 259DG contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.
- (10) See also section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”.

### *Application of Chapter*

#### **259DA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).
- (3) Condition B is that a payment or quasi-payment is made under or in connection with—
- the hybrid transfer arrangement, or
  - the underlying instrument.
- (4) Condition C is that—
- the payer is within the charge to corporation tax for the payment period, or
  - a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).
- (6) Condition E is that—
- it is a quasi-payment that is made as mentioned in subsection (3) and the payer is also a payee (see section 259BB(7)),
  - the payer and a payee are related (see section 259NC) at any time in the period—
    - beginning with the day on which the hybrid transfer arrangement is made, and
    - ending with the last day of the payment period, or
  - the hybrid transfer arrangement is a structured arrangement.
- (7) The hybrid transfer arrangement is a “structured arrangement” if it is reasonable to suppose that—
- the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or
  - the terms of the hybrid transfer arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

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- (9) Sections 259DF (cases where the payer is within the charge to corporation tax for the payment period) and 259DG (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

### **259DB Meaning of “hybrid transfer arrangement”, “underlying instrument” etc**

- (1) This section has effect for the purposes of this Chapter.
- (2) A “hybrid transfer arrangement” means—
- (a) a repo,
  - (b) a stock lending arrangement, or
  - (c) any other arrangement,
- that is an arrangement within subsection (3).
- (3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument (“the underlying instrument”) and—
- (a) the dual treatment condition is met in relation to the arrangement, or
  - (b) a substitute payment could be made under the arrangement.
- (4) The dual treatment condition is met in relation to the arrangement if—
- (a) in relation to a person, for the purposes of a tax—
    - (i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and
    - (ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact the arrangement is so regarded, and
  - (b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.
- (5) A payment or quasi-payment is a “substitute payment” if—
- (a) it consists of or involves—
    - (i) an amount being paid, or
    - (ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),
  - (b) that amount, or the value of that benefit, is representative of a return of any kind (“the underlying return”) that arises on, or in connection with, the underlying instrument, and
  - (c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.
- (6) For the purposes of subsection (3) where there is an arrangement, to which a person (“P”) and another person (“Q”) are party, under which—
- (a) a financial instrument (“the first instrument”) ceases to be owned by P (whether or not because it ceases to exist), and
  - (b) Q comes to own a financial instrument (“the second instrument”) under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,

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the second instrument is to be treated as being transferred from P to Q.

[<sup>F145</sup>(7) For the purposes of subsection (4) references to tax include any qualifying capital tax within the meaning given by section 259DD(11).]

#### Textual Amendments

F145 S. 259DB(7) inserted (retrospectively) by Finance Act 2018 (c. 3), Sch. 7 paras. 9, 19(4)

### 259DC Hybrid transfer deduction/non-inclusion mismatches and their extent

- (1) There is a “hybrid transfer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.
- (2) Case 1 applies where—
  - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
  - (b) all or part of that excess arises for a reason mentioned in subsection (8).
- (3) Subject to subsection (9), for the purposes of subsection (2)(b)—
  - (a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of any reasons mentioned in subsection (8)), and
  - (b) an excess or part of an excess is to be taken to arise for a reason mentioned in subsection (8) (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (4) and (5)), it could arise for a reason mentioned in subsection (8).
- (4) These are the “relevant assumptions”—
  - (a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;
  - (b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;
  - (c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—
    - (i) resident for the purposes of a tax charged under the law of that territory, or
    - (ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

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- (5) Where the relevant assumption in subsection (4)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (3)(b)—
- (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
  - (b) Part 4 (transfer pricing);
  - (c) this Part;
  - [<sup>F146</sup>(d) Part 10 (corporate interest restriction).]
- (6) Case 2 applies where there are one or more amounts of ordinary income (“under-taxed amounts”) that—
- (a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and
  - (b) are under taxed for a reason mentioned in subsection (8).
- (7) Subject to subsection (9), for the purposes of subsection (6)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well (even if it would have been under taxed for that other reason regardless of any reason mentioned in subsection (8)).
- (8) The reasons are—
- (a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));
  - (b) the payment or quasi-payment being a substitute payment.
- (9) For the purposes of this section, disregard—
- (a) any excess or part of an excess mentioned in subsection (2), and
  - (b) any under-taxed amount,
- in relation to which the financial trader exclusion applies (see section 259DE) or that arises as a result of a payee being a relevant investment fund (see section 259NA).
- (10) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).
- (11) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—
- $$(UTA \times (FMR - R)) FMR$$
- where—
- “UTA” is the under-taxed amount;
- “FMR” is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;
- “R” is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.
- (12) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).
- (13) See section 259DD for the meaning of “permitted taxable period” and “under taxed”.

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### Textual Amendments

**F146** S. 259DC(5)(d) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 19](#)

## 259DD Interpretation of section 259DC

- (1) This section has effect for the purposes of section 259DC.
- (2) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
  - (a) the period begins before the end of 12 months after the end of the payment period, or
  - <sup>[F147]</sup>(b) the period begins at a later time and it is just and reasonable for the amount of ordinary income to arise for the period (rather than an earlier one).]
- (3) An amount of ordinary income of a payee, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.
- (4) The payee's “full marginal rate” means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (3) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.
- (5) A “credit for underlying tax” means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.
- <sup>[F148]</sup>(6) A qualifying capital amount arising to a payee is treated as an amount of ordinary income of a payee and references to tax include any qualifying capital tax.
- (7) For the purposes of case 2—
  - (a) a qualifying capital amount arising to a payee, for a permitted taxable period, is “under taxed” if the highest rate at which tax is charged on the amount, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee’s full marginal rate for that period,
  - (b) in determining the payee’s “full marginal rate”, the reference to the taxable profits mentioned in subsection (4) includes any qualifying capital amount, and
  - (c) in determining a “credit for underlying tax”, the reference to profits includes any qualifying capital amount.
- (8) If the rate at which a qualifying capital tax is charged on a qualifying capital amount of a payee exceeds the rate at which tax would be charged on an amount of income of the payee, the excess is to be ignored.
- (9) For the purposes of subsections (6) to (8) a “qualifying capital amount” means an amount of a capital nature on which a qualifying capital tax is charged.
- (10) A qualifying capital tax is not regarded for this purpose as charged on an amount so far as—

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- (a) the amount is excluded, reduced or offset for the purposes of the tax by any exemption, exclusion, relief or credit that—
    - (i) applies specifically to all or part of the amount (as opposed to amounts of a capital nature generally), or
    - (ii) arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount, or
  - (b) the tax is, or falls to be, refunded (and section 259BC(6) and (7) apply for the purposes of this paragraph with the necessary modifications).
- (11) For the purposes of subsections (6) to (10) a “qualifying capital tax” means—
- (a) capital gains tax or the charge to corporation tax in respect of chargeable gains, or
  - (b) any tax chargeable under the law of a territory outside the United Kingdom that corresponds to a United Kingdom tax mentioned in paragraph (a), but does not include any tax chargeable at a nil rate.]

#### **Textual Amendments**

**F147** S. 259DD(2)(b) substituted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 24\(4\)\(13\)](#)

**F148** S. 259DD(6)-(11) inserted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 7 paras. 10, 19\(4\)](#)

#### **259DE The financial trader exclusion**

- (1) This section has effect for the purposes of section 259DC(9).
- (2) The financial trader exclusion applies, in relation to an excess or part of an excess mentioned in section 259DC(2) or an under-taxed amount, where conditions A to C are met.
- (3) Condition A is that the excess or part arises, or the under-taxed amount is under taxed, because the payment or quasi-payment—
  - (a) is a substitute payment,
  - (b) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and
  - (c) is brought into account by another person (“the financial trader”) in calculating the profits of a trade under—
    - (i) Part 3 of CTA 2009 (trading income), or
    - (ii) an equivalent provision of the law of a territory outside the United Kingdom.
- (4) Condition B is that the financial trader also brings any associated payments into account as mentioned in subsection (3)(c).
- (5) In subsection (4) “associated payment” means a payment or quasi-payment—
  - (a) in relation to which the financial trader is the payer or a payee, and
  - (b) that is made under, or in connection with, the underlying instrument or an arrangement that relates to the underlying instrument.
- (6) Condition C is that—
  - (a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, neither Chapter 3 (hybrid and

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- other mismatches from financial instruments) nor any equivalent provision under the law of a territory outside the United Kingdom would apply, and
- (b) the hybrid transfer arrangement under, or in connection with, which the substitute payment is made is not a structured arrangement (within the meaning given by section 259DA(7) and (8)).

### *Counteraction*

#### **259DF Counteraction where the payer is within the charge to corporation tax for the payment period**

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

#### **259DG Counteraction where a payee is within the charge to corporation tax**

- (1) This section applies in relation to a payee where—
- (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
- (b) it is reasonable to suppose that—
- (i) neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
- (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF does not fully counteract that mismatch if (and only if)—
- (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
- (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
- (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), or
- (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
- (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DF, and
- (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

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- (4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
  - (a) to any arrangements as to profit sharing that may exist between some or all of the payees,
  - (b) to whom any under-taxed amounts (within the meaning given by section 259DC(6)) arise, and
  - (c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) The “counteraction period” means—
  - (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

## CHAPTER 5

### HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **259E Overview of Chapter**

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because the payer is a hybrid entity.
- (2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.
- (3) Section 259EA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259EB defines “hybrid payer deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not fully counteracted by



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provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.

- (7) See also—
- (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”, and
  - (b) section 259BE for the meaning of “hybrid entity”, “investor” and “investor jurisdiction”.

### *Application of Chapter*

#### **259EA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that the payer is a hybrid entity (“the hybrid payer”).
- (4) Condition C is that—
  - (a) the hybrid payer is within the charge to corporation tax for the payment period, or
  - (b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259EB).
- (6) The provisions are—
  - (a) this Chapter and Chapters 6 to 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (7) Condition E is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (2) and the hybrid payer is also a payee (see section 259BB(7)),
  - (b) the hybrid payer and a payee are in the same control group (see section 259NB) at any time in the period—
    - (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
    - (ii) ending with the last day of the payment period, or
  - (c) that arrangement is a structured arrangement.
- (8) The arrangement is “structured” if it is reasonable to suppose that—
  - (a) the arrangement is designed to secure a hybrid payer deduction/non-inclusion mismatch, or
  - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

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- (9) The arrangement may be designed to secure a hybrid payer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (10) Sections 259EC (cases where the hybrid payer is within the charge to corporation tax for the payment period) and 259ED (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

### **259EB Hybrid payer deduction/non-inclusion mismatches and their extent**

- (1) There is a “hybrid payer deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—
  - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
  - (b) all or part of that excess arises by reason of the hybrid payer being a hybrid entity.
- [<sup>F149</sup>(1A) But there is no hybrid payer deduction/non-inclusion mismatch so far as the relevant deduction is—
  - (a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or
  - (b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.]
- (2) The amount of the hybrid payer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (3) For the purposes of subsection (1)(b)—
  - (a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of whether the hybrid payer is a hybrid entity), and
  - (b) an excess or part of an excess is to be taken to arise by reason of the hybrid payer being a hybrid entity (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsection (4)), it could arise by reason of the hybrid payer being a hybrid entity.
- (4) These are the “relevant assumptions”—
  - (a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;
  - (b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business.
- (5) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

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- (a) the period begins before the end of 12 months after the end of the payment period, or
- (b) where the period begins after that—
  - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
  - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

#### Textual Amendments

**F149** S. 259EB(1A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 24(5)(13)

### Counteraction

#### **259EC Counteraction where the hybrid payer is within the charge to corporation tax for the payment period**

- (1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5) (“the restricted deduction”) may not be deducted from the hybrid payer's income for the payment period unless it is deducted from dual inclusion income for that period.
- (3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer's income for the payment period—
  - (a) is carried forward to subsequent accounting periods of the payer, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) In this section “dual inclusion income” of the payer for an accounting period means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—
  - (a) ordinary income of the payer for that period for corporation tax purposes, and
  - (b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.
- (5) A taxable period of an investor is “permitted” for the purposes of paragraph (b) of subsection (4) if—
  - (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

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## **259ED Counteraction where a payee is within the charge to corporation tax**

- (1) This section applies in relation to a payee where—
  - (a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or
    - (ii) such a provision does apply, but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—
  - (a) the amount of the relevant deduction that the provision prevents from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, is less than the amount of the mismatch, and
  - (b) the hybrid payer is still able to deduct some of the relevant deduction from income, for the payment period, that is not dual inclusion income.
- (3) In this section “the relevant amount” is—
  - (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, and
    - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the payee is the only payee, an amount equal to—
  - (a) the relevant amount, less
  - (b) any dual inclusion income,
 is to be treated as income arising to the payee for the counteraction period.
- (5) If there is more than one payee, an amount equal to—
  - (a) the payee's share of the relevant amount, less
  - (b) the relevant proportion of any dual inclusion income,
 is to be treated as income arising to the payee for the counteraction period.
- (6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—
  - (a) to any arrangements as to profit sharing that may exist between some or all of the payees, and
  - (b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

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- (7) The “relevant” proportion of any dual inclusion income for the payment period is the same as the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).
- (8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (9) In this section—
- “counteraction period” means—
- (a) if an accounting period of the payee coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;
- “dual inclusion income” means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—
- (a) ordinary income of the payer for the payment period, and
  - (b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of a tax charged under the law of an investor jurisdiction.
- (10) A taxable period of an investor is “permitted” for the purposes of subsection (9) if—
- (a) the period begins before the end of 12 months after the end of the payment period, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

## CHAPTER 6

### DEDUCTION/NON-INCLUSION MISMATCHES RELATING TO TRANSFERS BY PERMANENT ESTABLISHMENTS

#### *Introduction*

#### **259F Overview of Chapter**

- (1) This Chapter contains provision that counteracts certain excessive deductions that arise in relation to transfers of money or money's worth made, or taken to be made, by a multinational company's permanent establishment in the United Kingdom to the company in the parent jurisdiction.
- (2) The Chapter counteracts such deductions by altering the corporation tax treatment of the company.
- (3) Section 259FA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (3) of that section defines “multinational company” and “the parent jurisdiction”.

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- (5) Subsection (8) of that section defines “the excessive PE deduction”.
- (6) Section 259FB contains provision for the counteraction of the excessive PE deduction.
- (7) See also section 259BF for the meaning of “permanent establishment”.

### *Application of Chapter*

#### **259FA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to C are met.
- (2) Condition A is that a company is a multinational company.
- (3) For the purposes of this Chapter, a company is a multinational company if—
  - (a) it is resident in a territory outside the United Kingdom (“the parent jurisdiction”) for the purposes of a tax charged under the law of that territory, and
  - (b) it is within the charge to corporation tax because it carries on a business in the United Kingdom through a permanent establishment in the United Kingdom.
- (4) Condition B is that, disregarding the provisions mentioned in subsection (5), there is an amount (“the PE deduction”) that—
  - (a) may (in substance) be deducted from the company's income for the purposes of calculating the company's taxable profits for an accounting period (“the relevant PE period”) for corporation tax purposes, <sup>F150</sup> ...
  - (b) is in respect of a transfer of money or money's worth from the company in the United Kingdom to the company in the parent jurisdiction that—
    - (i) is actually made, or
    - (ii) is (in substance) treated as being made for corporation tax purposes <sup>F151</sup>, and
  - (c) is not in respect of the financing cost of loan capital which the permanent establishment is assumed to have by virtue of section 21(2) of CTA 2009 for the purpose of applying subsection (1) of that section (the separate enterprise principle).]

- [ For the purposes of this section “the PE deduction” does not include—
- <sup>F152</sup>(4A) (a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or
  - (b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.]

- (5) The provisions are—
  - (a) this Chapter and Chapters 7 to 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (6) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5)—
  - (a) the circumstances giving rise to the PE deduction will not result in—

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- (i) an increase in the taxable profits of the company for any permitted taxable period, or
  - (ii) a reduction of a loss made by the company for any permitted taxable period,
- for the purposes of a tax charged under the law of the parent jurisdiction, or
- (b) those circumstances will result in such an increase or reduction for one or more permitted taxable periods, but the PE deduction exceeds the aggregate effect on taxable profits.
- (7) “The aggregate effect on taxable profits” is the sum of—
- (a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and
  - (b) any amounts by which a loss made by the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

[ For the purposes of subsections (6) and (7) any increase in taxable profits or reduction <sup>F153</sup>(7A) of losses is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.]

- (8) In this Chapter “the excessive PE deduction” means—
  - (a) where paragraph (a) of subsection (6) applies, the PE deduction, or
  - (b) where paragraph (b) of subsection (6) applies, the PE deduction so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.
- (9) For the purposes of subsections (6) and (7) a taxable period of the company, for the purposes of a tax charged under the law of the parent jurisdiction, is “permitted” if—
  - (a) the period begins before the end of 12 months after the end of the relevant PE period, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period for the purposes of subsections (6) and (7), and
    - (ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

(10) Section 259FB contains provision for counteracting the excessive PE deduction.

#### Textual Amendments

**F150** Word in s. 259FA(4)(a) omitted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 17\(2\)](#), 36

**F151** S. 259FA(4)(c) and word inserted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 17\(2\)](#), 36

**F152** S. 259FA(4A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 24\(6\)\(13\)](#)

**F153** S. 259FA(7A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 para. 4](#)

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## *Counteraction*

### **259FB Counteraction of the excessive PE deduction**

- (1) For corporation tax purposes, the excessive PE deduction may not be deducted from the company's income for the relevant PE period unless it is deducted from dual inclusion income for that period.
- (2) So much of the excessive PE deduction (if any) as, by virtue of subsection (1), cannot be deducted from the company's income for the relevant PE period—
  - (a) is carried forward to subsequent accounting periods of the company, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (3) In this section “dual inclusion income” of the company for an accounting period means an amount that is both—
  - (a) ordinary income of the company for that period for corporation tax purposes, and
  - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.
- (4) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (3) if—
  - (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

## **CHAPTER 7**

### HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

### **259G Overview of Chapter**

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because a payee is a hybrid entity.
- (2) The Chapter counteracts mismatches by—
  - (a) altering the corporation tax treatment of the payer for the payment period,
  - (b) treating income chargeable to corporation tax as arising to an investor who is within the charge to corporation tax, or
  - (c) treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.



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- (3) Section 259GA contains the conditions that must be met for this Chapter to apply.
- (4) Section 259GB defines “hybrid payee deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (5) Section 259GC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.
- (6) Section 259GD contains provision that counteracts the mismatch where an investor in the payee is within the charge to corporation tax and the mismatch is not fully counteracted by section 259GC or an equivalent provision under the law of a territory outside the United Kingdom.
- (7) Section 259GE contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not otherwise fully counteracted.
- (8) See also—
  - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”;
  - (b) section 259BE for the meaning of “hybrid entity”, “investor” and “investor jurisdiction”.

### *Application of Chapter*

#### **259GA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that a payee is a hybrid entity (a “hybrid payee”).
- (4) Condition C is that—
  - (a) the payer is within the charge to corporation tax for the payment period,
  - (b) an investor in a hybrid payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, or
  - (c) a hybrid payee is a limited liability partnership.
- (5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259GB).
- (6) The provisions are—
  - (a) this Chapter and Chapters 8 to 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (7) Condition E is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a hybrid payee (see section 259BB(7)),
  - (b) the payer and a hybrid payee or an investor in a hybrid payee are in the same control group (see section 259NB) at any time in the period—

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- (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
  - (ii) ending with the last day of the payment period, or
  - (c) that arrangement is a structured arrangement.
- (8) The arrangement is “structured” if it is reasonable to suppose that—
- (a) the arrangement is designed to secure a hybrid payee deduction/non-inclusion mismatch, or
  - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (9) The arrangement may be designed to secure a hybrid payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (10) The following provisions contain provision for the counteraction of the hybrid payee deduction/non-inclusion mismatch—
- (a) section 259GC (cases where the payer is within the charge to corporation tax for the payment period),
  - (b) section 259GD (cases where an investor in a hybrid payee is within the charge to corporation tax), and
  - (c) section 259GE (cases where a hybrid payee is a limited liability partnership).

### **259GB Hybrid payee deduction/non-inclusion mismatches and their extent**

- (1) There is a “hybrid payee deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—
- (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and
  - (b) all or part of that excess arises by reason of one or more payees being hybrid entities.
- [ But there is no hybrid payee deduction/non-inclusion mismatch so far as the relevant <sup>F154</sup>(1A) deduction is—
- (a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or
  - (b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.]
- (2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).
- (3) A relevant amount of the excess is to be taken (so far as would not otherwise be the case) to arise as mentioned in subsection (1)(b) where—
- (a) a payee is a hybrid entity,
  - (b) there is no territory—
    - (i) where that payee is resident for the purposes of a tax charged [<sup>F155</sup>at a higher rate than nil] under the law of that territory, or

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- (ii) under the law of which ordinary income arises to that payee, by reason of the payment or quasi-payment, for the purposes of a tax that is charged on that payee by virtue of that payee having a permanent establishment in that territory, and
    - (c) no income arising to that payee, by reason of the payment or quasi-payment, is brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge.
  - (4) For the purposes of subsection (3), the “relevant amount” of the excess is the lesser of—
    - (a) the amount of the excess, and
    - (b) an amount equal to the amount of ordinary income that it is reasonable to suppose would, by reason of the payment or quasi-payment, arise to the payee for corporation tax purposes, if—
      - (i) the payee were a company, and
      - (ii) the payment or quasi-payment were made in connection with a trade carried on by the payee in the United Kingdom through a permanent establishment in the United Kingdom.
- [ In applying subsection (4)(b) in a case where the payee is a partnership <sup>F157</sup> or a <sup>F156</sup>(4A) relevant transparent entity], it is to be assumed that no amount of ordinary income arises to the payee, by reason of the payment or quasi-payment, if—
  - (a) a partner in the partnership <sup>F158</sup>, or a member of the entity,] is entitled to the amount, and
  - (b) having regard only to—
    - (i) the law of the territory where the partnership <sup>F159</sup> or entity] is established, and
    - (ii) the law of the territory where the partner <sup>F160</sup> or member] is resident for tax purposes or, if the partner <sup>F160</sup> or member] is not resident anywhere for tax purposes, where the partner <sup>F160</sup> or member] is established,the payee would not be regarded as a hybrid entity.
- [ Subsection (4AB) applies in relation to a payment or quasi-payment if—
  - <sup>F161</sup>(4AA) (a) one or more of the payees is a partnership or a relevant transparent entity,
  - (b) there is a territory under the law of which an amount of ordinary income would arise, or would potentially arise, to a hybrid entity as a result of the circumstances giving rise to the relevant deduction if the entity were a person resident in that territory for the purposes of a tax charged under the law of that territory, and
  - (c) that hybrid entity is not (ignoring subsection (4AB)(b)) a payee.
- (4AB) Where this subsection applies—
  - (a) if any such hybrid entity is not either a partnership or a relevant transparent entity, subsection (4A) does not apply, or
  - (b) otherwise, every such hybrid entity is to be treated as a payee for the purposes of determining, for the purposes of subsection (1)(b), if an excess arises by reason of one or more payees being hybrid entities.]
- (4B) In <sup>F162</sup>subsections (4A) to (4AB) and (4C)] “partnership” has the meaning given by section 259NE(4).]

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- [ An entity is a “relevant transparent entity” if—
- <sup>F163</sup>(4C) (a) the entity is not a partnership,  
 (b) the entity is legally constituted in a territory outside the United Kingdom,  
 (c) all of the entity’s income or profits for the purposes of a tax charged under the law of that territory are treated (or would be if there were any) for the purposes of that tax as the income or profits of its members, and  
 (d) any such tax that is, or that would be, charged on such a member that is resident for tax purposes in that territory is not charged at a nil rate.
- (4D) For the purposes of subsection (4C), a person is a “member” of an entity if the person is entitled to a proportion of the profits of the entity as a result of—
- (a) where the entity has share capital, holding shares forming part of that capital, or  
 (b) where the entity does not have share capital, an entitlement similar to that which would be enjoyed if the entity had share capital and the person held shares forming part of that capital.]
- (5) In subsection (3)(c) “chargeable profits”—
- (a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and  
 (b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part.
- (6) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—
- (a) the period begins before the end of 12 months after the end of the payment period, or  
 (b) where the period begins after that—
- (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and  
 (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

#### Textual Amendments

- F154** S. 259GB(1A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 24\(7\)\(13\)](#)
- F155** Words in s. 259GB(3)(b)(i) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 7 para. 5](#)
- F156** S. 259GB(4A)(4B) inserted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 7 paras. 11, 19\(4\)](#)
- F157** Words in s. 259GB(4A) inserted (retrospectively) by [Finance Act 2022 \(c. 3\), s. 26\(2\)\(a\)\(6\)](#) (with s. 26(7)-(10))
- F158** Words in s. 259GB(4A)(a) inserted (retrospectively) by [Finance Act 2022 \(c. 3\), s. 26\(2\)\(b\)\(6\)](#) (with s. 26(7)-(10))
- F159** Words in s. 259GB(4A)(b)(i) inserted (retrospectively) by [Finance Act 2022 \(c. 3\), s. 26\(2\)\(c\)\(i\)\(6\)](#) (with s. 26(7)-(10))
- F160** Words in s. 259GB(4A)(b)(ii) inserted (retrospectively) by [Finance Act 2022 \(c. 3\), s. 26\(2\)\(c\)\(ii\)\(6\)](#) (with s. 26(7)-(10))
- F161** S. 259GB(4AA)(4AB) inserted (retrospectively) by [Finance Act 2022 \(c. 3\), s. 26\(3\)\(6\)](#) (with s. 26(7)-(10))
- F162** Words in s. 259GB(4B) substituted (retrospectively) by [Finance Act 2022 \(c. 3\), s. 26\(4\)\(6\)](#) (with s. 26(7)-(10))

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**F163** S. 259GB(4C)(4D) inserted (retrospectively) by Finance Act 2022 (c. 3), s. 26(5)(6) (with s. 26(7)-(10))

### *Counteraction*

#### **259GC Counteraction where the payer is within the charge to corporation tax for the payment period**

- (1) This section applies where the payer is within the charge to corporation tax for the payment period.
- (2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

#### **259GD Counteraction where the investor is within the charge to corporation tax**

- (1) This section applies in relation to an investor in a hybrid payee where—
  - (a) the investor is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and
  - (b) it is reasonable to suppose that—
    - (i) neither section 259GC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or
    - (ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).
- (2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC does not fully counteract that mismatch if (and only if)—
  - (a) it does not reduce the relevant deduction by the full amount of the mismatch, and
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.
- (3) In this section “the relevant amount” is—
  - (a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch, or
  - (b) in a case where subsection (1)(b)(ii) applies, the lesser of—
    - (i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC, and
    - (ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).
- (4) If the investor is the only investor in the hybrid payee, the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

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- (5) If there is more than one investor in the hybrid payee, an amount equal to the investor's share of the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.
- (6) For the purposes of subsections (4) and (5) the “appropriate proportion of the relevant amount”—
  - (a) if the hybrid payee is the only hybrid payee, is all of the relevant amount, or
  - (b) if there is more than one hybrid payee, is the proportion of the relevant amount apportioned to the hybrid payee upon an apportionment of that amount between all the hybrid payees on a just and reasonable basis having regard (in particular) to—
    - (i) any arrangements as to profit sharing that may exist between some or all of the payees, and
    - (ii) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.
- (7) The investor's share of the appropriate proportion of the relevant amount is to be determined by apportioning that proportion of that amount between all the investors in the hybrid payee on a just and reasonable basis, having regard (in particular) to any arrangements as to profit sharing that may exist between some or all of those investors.
- (8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(23) of that Act).
- (9) The “counteraction period” means—
  - (a) if an accounting period of the investor coincides with the payment period, that accounting period, or
  - (b) otherwise, the first accounting period of the investor that is wholly or partly within the payment period.

### **259GE Counteraction where a hybrid payee is an LLP**

- (1) This section applies in relation to a hybrid payee where the hybrid payee is a limited liability partnership and it is reasonable to suppose that—
  - (a) none of the following provisions applies—
    - (i) section 259GC;
    - (ii) section 259GD;
    - (iii) any provision under the law of a territory outside the United Kingdom that is equivalent to either of those sections, or
  - (b) one or more of those provisions apply, but the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) is not fully counteracted.
- (2) The mismatch is not fully counteracted if (and only if), after the application of such of those provisions as apply—
  - (a) the relevant deduction is not reduced by the full amount of the mismatch,
  - (b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits, and
  - (c) the lesser of—

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- (i) the difference between the amount of the mismatch and the amount by which it is reasonable to suppose the relevant deduction is reduced, and
  - (ii) the amount of the relevant deduction that may still be deducted, exceeds the sum of any amounts of income treated as arising under section 259GD or any equivalent provision under the law of a territory outside the United Kingdom.
- (3) In this section “the relevant amount” is—
  - (a) in a case where subsection (1)(a) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5), or
  - (b) in a case where subsection (1)(b) applies, an amount equal to the excess mentioned in subsection (2)(c).
- (4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.
- (5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.
- (6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—
  - (a) any arrangements as to profit sharing that may exist between some or all of the payees, and
  - (b) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.
- (7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).
- (8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disappplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).
- (9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part, except section 259M (anti-avoidance).

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## CHAPTER 8

### MULTINATIONAL PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

#### *Introduction*

#### **259H Overview of Chapter**

- (1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments, where the payer is within the charge to corporation tax, because a payee is multinational company.
- (2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer.
- (3) Section 259HA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (4) of that section defines “multinational company”, “parent jurisdiction” and “PE jurisdiction”.
- (5) Section 259HB defines “multinational payee deduction/non-inclusion mismatch” and provides how the amount of the mismatch is to be calculated.
- (6) Section 259HC contains provision that counteracts the mismatch.
- (7) See also—
  - (a) section 259BB for the meaning of “payment”, “quasi-payment”, “payment period”, “relevant deduction”, “payer” and “payee”;
  - (b) section 259BF for the meaning of “permanent establishment”.

#### *Application of Chapter*

#### **259HA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to E are met.
- (2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.
- (3) Condition B is that a payee is a multinational company.
- (4) For the purposes of this Chapter, a company is a “multinational company” if—
  - (a) it is resident in a territory (“the parent jurisdiction”) for tax purposes under the law of that territory, and
  - (b) it is regarded as carrying on a business in another territory (“the PE jurisdiction”) through a permanent establishment in that territory (whether it is so regarded under the law of the parent jurisdiction, the PE jurisdiction or any other territory).
- [<sup>F164</sup>(5) Condition C is that—
  - (a) the payer is within the charge to corporation tax for the payment period, or
  - (b) the multinational company—
    - (i) is UK resident for the payment period, and



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- (ii) under the law of the parent jurisdiction, is regarded as carrying on a business in the PE jurisdiction through a permanent establishment in that territory but, under the law of the PE jurisdiction, is not regarded as doing so.]
- (6) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (7), there would be a multinational payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259HB).
- (7) The provisions are—
  - (a) this Chapter and Chapters 9 and 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (8) Condition E is that—
  - (a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),
  - (b) the payer and the multinational company are in the same control group (see section 259NB) at any time in the period—
    - (i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and
    - (ii) ending with the last day of the payment period, or
  - (c) that arrangement is a structured arrangement.
- (9) The arrangement is “structured” if it is reasonable to suppose that—
  - (a) the arrangement is designed to secure a multinational [<sup>F165</sup>payee] deduction/non-inclusion mismatch, or
  - (b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.
- (10) The arrangement may be designed to secure a multinational payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.
- (11) Section 259HC contains provision for the counteraction of the multinational payee deduction/non-inclusion mismatch.

#### Textual Amendments

**F164** S. 259HA(5) substituted (with effect in accordance with s. 19(5)(6) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 19\(2\)\(a\)](#)

**F165** Word in s. 259HA(9)(a) substituted (retrospective to 15.9.2016) by the [Finance Act 2019 \(c. 1\), s. 19\(2\)\(b\)\(7\)](#)

### 259HB Multinational payee deduction/non-inclusion mismatches and their extent

- (1) There is a “multinational payee deduction/non-inclusion mismatch”, in relation to a payment or quasi-payment, if—
  - (a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

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- (b) all or part of that excess arises by reason of one or more payees being multinational companies.

<sup>F166</sup> [ But there is no multinational payee deduction/non-inclusion mismatch so far as the (1A) relevant deduction is—

- (a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or
- (b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.]

- (2) The extent of the multinational payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

<sup>F167</sup> [ The excess is to be taken (so far as would not otherwise be the case) to arise for the (2A) purposes of subsection (1)(b) by reason of a payee being a multinational company so far as it would not arise if it is assumed—

- (a) that the company is not regarded, under the law of the parent jurisdiction, the PE jurisdiction or any other territory, as carrying on a business in the PE jurisdiction through a permanent establishment in that jurisdiction, and
- (b) that, for tax purposes under the law of the parent jurisdiction, all amounts of ordinary income arising, by reason of the payment or quasi-payment, to the company are regarded as arising to it in that jurisdiction and nowhere else.]

- (3) For the purposes of subsection (1)(b)—

- (a) where the law of a PE jurisdiction in relation to a payee that is a multinational company makes no provision for charging tax on any companies, so much of the excess as arises as a result is to be taken not to arise by reason of that payee being a multinational company, but
- (b) subject to that, it does not matter whether the excess or part arises for another reason as well as one or more payees being multinational companies (even if it would have arisen for that other reason regardless of whether any payees are multinational companies).

- (4) A taxable period of a payee is “permitted” in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

- (a) the period begins before the end of 12 months after the end of the payment period, or
- (b) where the period begins after that—
- (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
- (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

#### Textual Amendments

**F166** S. 259HB(1A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 24\(8\)\(13\)](#)

**F167** S. 259HB(2A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 7 para. 12](#)

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## Counteraction

### **[<sup>F168</sup>259HC] Counteraction of the multinational payee deduction/non-inclusion mismatch**

For corporation tax purposes—

- (a) if paragraph (b) of Condition C in subsection (5) of section 259HA is met, an amount equal to the multinational payee deduction/non-inclusion mismatch mentioned in subsection (6) of that section is to be treated as income arising to the multinational company in the United Kingdom (and nowhere else) for the payment period, and
- (b) in any other case, the relevant deduction that may be deducted from the payer’s income for that period is to be reduced by that amount.]

#### **Textual Amendments**

**F168** S. 259HC substituted (with effect in accordance with s. 19(5)(6) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 19\(3\)](#)

## CHAPTER 9

### HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

#### *Introduction*

#### **259I Overview of Chapter**

- (1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.
- (2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.
- (3) Section 259IA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (4) of that section defines “hybrid entity double deduction amount”.
- (5) Section 259IB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.
- (6) Section 259IC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259IB.
- (7) See also section 259BE for the meaning of “hybrid entity”, “investor” and “investor jurisdiction”.

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### *Application of Chapter*

#### **259IA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to C are met.
- (2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose—
  - (a) could be deducted from the income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period (“the hybrid entity deduction period”), and
  - (b) could also be deducted, under the law of the investor jurisdiction, from the income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period (“the investor deduction period”).
- (3) The provisions are—
  - (a) this Chapter and Chapter 10, and
  - (b) any equivalent provision under the law of a territory outside the United Kingdom.
- (4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as “the hybrid entity double deduction amount”.
- (5) Condition B is that—
  - (a) the investor is within the charge to corporation tax for the investor deduction period, or
  - (b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.
- (6) Condition C is that—
  - (a) the hybrid entity and any investor in it are related (see section 259NC) at any time—
    - (i) in the hybrid entity deduction period, or
    - (ii) in the investor deduction period, or
  - (b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.
- (7) An arrangement is “structured” if it is reasonable to suppose that—
  - (a) the arrangement is designed to secure the hybrid entity double deduction amount, or
  - (b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.
- (8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.
- (9) Sections 259IB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259IC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

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## Counteraction

### 2591B Counteraction where the investor is within the charge to corporation tax

- (1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.
- (2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.
- (3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's income for the investor deduction period—
  - (a) is carried forward to subsequent accounting periods of the investor, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) If the Commissioners are satisfied that the investor will have no dual inclusion income—
  - (a) for an accounting period after the investor deduction period (“the relevant period”), nor
  - (b) for any accounting period after the relevant period,any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.
- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period—
  - (a) is carried forward to subsequent accounting periods of the investor, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the investor for an accounting period.
- (7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.
- (8) In this section “dual inclusion income” of the investor for an accounting period means an amount that is both—
  - (a) ordinary income of the investor for that period for corporation tax purposes, and

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- (b) ordinary income of the hybrid entity for a permitted taxable period for the purposes of any tax under the law of a territory outside the United Kingdom.
- (9) A taxable period of the hybrid entity is “permitted” for the purposes of paragraph (b) of subsection (8) if—
  - (a) the period begins before the end of 12 months after the end of the accounting period of the investor mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

### **259IC Counteraction where the hybrid entity is within the charge to corporation tax**

- (1) This section applies where—
  - (a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,
  - (b) it is reasonable to suppose that—
    - (i) no provision under the law of an investor jurisdiction that is equivalent to section 259IB applies, or
    - (ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period, and
  - (c) the secondary counteraction condition is met.
- (2) The secondary counteraction condition is met if—
  - (a) the hybrid entity and any investor in it are in the same control group (see section 259NB) at any time in—
    - (i) the hybrid entity deduction period, or
    - (ii) the investor deduction period, or
  - (b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259IA(7) and (8)).
- (3) In this section “the restricted deduction” means—
  - (a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, or
  - (b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that it is reasonable to suppose, under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259IB, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period.
- (4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's income for the hybrid entity deduction period <sup>F169</sup>unless it is deducted from—
  - (c) dual inclusion income for that period, or

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- (d) section 259ID income for that period.]
- (5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's income for the hybrid entity deduction period—
- (a) is carried forward to subsequent accounting periods of the hybrid entity, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income—
- (a) for an accounting period after the hybrid entity deduction period (“the relevant period”), nor
  - (b) for any accounting period after the relevant period,
- any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.
- (7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period—
- (a) is carried forward to subsequent accounting periods of the hybrid entity, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the hybrid entity for an accounting period.
- (9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.
- (10) In this section “dual inclusion income” of the hybrid entity for an accounting period means an amount that is both—
- (a) ordinary income of the hybrid entity for that period for corporation tax purposes, and
  - (b) ordinary income of an investor in the hybrid entity for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.
- (11) A taxable period of an investor is “permitted” for the purposes of paragraph (b) of subsection (10) if—
- (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—

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- (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
- (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

#### Textual Amendments

**F169** Words in s. 259IC(4) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 13, 19\(4\)](#)

#### [<sup>F170</sup>259ID] **Section 259ID income for the purposes of section 259IC**

- (1) This section applies where—
  - (a) section 259IC applies,
  - (b) the restricted deduction exceeds the dual inclusion income of the hybrid entity (if any) for the hybrid entity deduction period, and
  - (c) conditions A to D are met.
- (2) Condition A is that—
  - (a) the investor in the hybrid entity makes a payment to the hybrid entity, and
  - (b) no amount is deductible, under the law of the investor jurisdiction, from the income of the investor in respect of the payment.
- (3) Condition B is that, as a result of the payment, an amount of ordinary income arises to the hybrid entity for the hybrid entity deduction period.
- (4) Condition C is that the payment is made in direct consequence of a payment made to the investor by a person (“the unrelated party”) who is not related (see section 259NC) to the investor or the hybrid entity.
- (5) Condition D is that, as a result of the payment made by the unrelated party, an amount of ordinary income arises to the investor.
- (6) For the purposes of section 259IC “section 259ID income” is an amount of income of the hybrid entity equal to the lesser of—
  - (a) the amount of the payment made by the investor to the hybrid entity, and
  - (b) the amount of the payment made by the unrelated party to the investor.]

#### Textual Amendments

**F170** S. 259ID inserted (15.9.2016 retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 14, 19\(4\)](#)



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## CHAPTER 10

### DUAL TERRITORY DOUBLE DEDUCTION CASES

#### *Introduction*

#### **259J Overview of Chapter**

- (1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company—
  - (a) being a dual resident company, or
  - (b) being a relevant multinational company.
- (2) The counteraction operates by altering the corporation tax treatment of the company.
- (3) Section 259JA contains the conditions that must be met for this Chapter to apply.
- (4) Subsection (3) of that section defines “dual resident company”.
- (5) Subsection (4) of that section defines “relevant multinational company”, “parent jurisdiction” and “PE jurisdiction”.
- (6) Subsection (5) of that section defines “dual territory double deduction amount”.
- (7) Section 259JB contains provision that counteracts the mismatch where the company is a dual resident company.
- (8) Section 259JC contains provision that counteracts the mismatch where the company is a multinational company and the United Kingdom is the parent jurisdiction.
- (9) Section 259JD contains provision that counteracts the mismatch where the company is a relevant multinational company, the United Kingdom is the PE jurisdiction and the mismatch is not counteracted under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259JC.
- (10) See also section 259BF for the meaning of “permanent establishment”.

#### *Application of Chapter*

#### **259JA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A and B are met.
- (2) Condition A is that a company is a—
  - (a) dual resident company, or
  - (b) relevant multinational company.
- (3) For the purposes of this Chapter a company is a “dual resident company” if—
  - (a) it is UK resident, and
  - (b) it is also within the charge to a tax under the law of a territory outside the United Kingdom because—
    - (i) it derives its status as a company from that law,
    - (ii) its place of management is in that territory, or

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- (iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (4) For the purposes of this Chapter a company is a “relevant multinational company” if—
- (a) it is within the charge to a tax, under the law of a territory (“the PE jurisdiction”) in which it is not resident for tax purposes, because it carries on business in that territory through a permanent establishment in that territory, and
  - (b) either—
    - (i) the PE jurisdiction is the United Kingdom, or
    - (ii) the territory in which the company is resident for tax purposes (“the parent jurisdiction”) is the United Kingdom.
- (5) Condition B is that there is an amount (“the dual territory double deduction amount”) that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company or a relevant multinational company—
- (a) be deducted from the company's income for an accounting period (“the deduction period”) for corporation tax purposes, and
  - (b) also be deducted from the company's income for a taxable period (“the foreign deduction period”) for the purposes of a tax charged under the law of a territory outside the United Kingdom.
- (6) The following provisions provide for the counteraction of the dual territory double deduction amount—
- (a) section 259JB (cases where a company is dual resident),
  - (b) section 259JC (cases where a company is a relevant multinational and the United Kingdom is the parent jurisdiction), and
  - (c) section 259JD (cases where a company is a relevant multinational, the United Kingdom is the PE jurisdiction and the amount is not counteracted in the parent jurisdiction).

### *Counteraction*

#### **259JB Counteraction where mismatch arises because of a dual resident company**

- (1) This section applies where the dual territory double deduction amount arises by reason of the company being a dual resident company.
- (2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.
- (3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—
  - (a) is carried forward to subsequent accounting periods of the company, and
  - (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

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- (4) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.
- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company—
  - (a) is carried forward to subsequent accounting periods of the company, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the company for an accounting period.
- (7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.
- (8) In this section “dual inclusion income” of the company for an accounting period means an amount that is both—
  - (a) ordinary income of the company for that period for corporation tax purposes, and
  - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.
- (9) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (8) if—
  - (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

#### **259JC Counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction**

- (1) This section applies where—
  - (a) the dual territory double deduction amount arises by reason of the company being a relevant multinational company, and

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- (b) the United Kingdom is the parent jurisdiction.
- (2) If some or all of the dual territory double deduction amount is (in substance) deducted (“the impermissible overseas deduction”), for the purposes of a tax under the law of a territory outside the United Kingdom, from the income of any person, for any taxable period, that is not dual inclusion income of the company—
    - (a) the dual territory double deduction amount that may be deducted, for corporation tax purposes, from the company's income for the deduction period is reduced by the amount of the impermissible overseas deduction, and
    - (b) such just and reasonable adjustments (if any) as are required to give effect to that reduction, for corporation tax purposes, are to be made.
  - (3) Any adjustment required to be made under subsection (2) may be made (whether or not by an officer of Revenue and Customs)—
    - (a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and
    - (b) despite any time limit imposed by or under any enactment.
  - (4) In this section “dual inclusion income” of the company means an amount that is both—
    - (a) ordinary income of the company for an accounting period for corporation tax purposes, and
    - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.
  - (5) A taxable period is “permitted” for the purposes of paragraph (b) of subsection (4) if—
    - (a) the period begins before the end of 12 months after the end of the accounting period of the company mentioned in paragraph (a) of that subsection, or
    - (b) where the period begins after that—
      - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
      - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

### **259JD Counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction**

- (1) This section applies where—
  - (a) the dual territory double deduction amount arises as a result of the company being a relevant multinational company,
  - (b) the United Kingdom is the PE jurisdiction, and
  - (c) it is reasonable to suppose that no provision of the law of the parent jurisdiction that is equivalent to section 259JC applies.
- (2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.
- (3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—
  - (a) is carried forward to subsequent accounting periods of the company, and

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- (b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.
- (4) If the Commissioners are satisfied that the company has ceased to be a relevant multinational company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) (“the stranded deduction”) may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a relevant multinational company.
- (5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a relevant multinational company—
- (a) is carried forward to subsequent accounting periods of the company, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted (“the illegitimate overseas deduction”), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the company for an accounting period.
- (7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.
- (8) In this section “dual inclusion income” of the company for an accounting period means an amount that is both—
- (a) ordinary income of the company for that period for corporation tax purposes, and
  - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.
- (9) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (8) if—
- (a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

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## CHAPTER 11

### IMPORTED MISMATCHES

#### *Introduction*

#### **259K Overview of Chapter**

- (1) This Chapter contains provision denying deductions in connection with payments or quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.
- (2) Section 259KA contains the conditions that must be met for this Chapter to apply and defines “imported mismatch payment” and “imported mismatch arrangement”.
- (3) Section 259KB defines “dual territory double deduction”, “excessive PE deduction” and “PE jurisdiction”.
- (4) Section 259KC contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.
- [<sup>F171</sup>(4A) Section 259KD provides for relief where an amount is deducted from dual inclusion income.]
- (5) See also section 259BB for the meaning of “payment”, “quasi-payment”, “relevant deduction”, “payment period” and “payer”.

#### **Textual Amendments**

**F171** S. 259K(4A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 15, 19\(4\)](#)

#### *Application of Chapter*

#### **259KA Circumstances in which the Chapter applies**

- (1) This Chapter applies if conditions A to G are met.
- (2) Condition A is that a payment or quasi-payment (“the imported mismatch payment”) is made under, or in connection with, an arrangement (“the imported mismatch arrangement”).
- (3) Condition B is that, in relation to the imported mismatch payment, the payer (“P”) is within the charge to corporation tax for the payment period.
- (4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.
- (5) A “series of arrangements” means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement (“the over-arching arrangement”).
- (6) Condition D is that—

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- (a) under an arrangement in the series other than the imported mismatch arrangement, there is a payment or quasi-payment (“the mismatch payment”) in relation to which it is reasonable to suppose that there is or will be—
  - (i) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),
  - (ii) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),
  - (iii) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),
  - (iv) a hybrid payee deduction/non-inclusion mismatch (see section 259GB),
  - (v) a multinational payee deduction/non-inclusion mismatch (see section 259HB),
  - (vi) a hybrid entity double deduction amount (see section 259IA(4)), or
  - (vii) a dual territory double deduction (see section 259KB), or
- (b) as a consequence of an arrangement in the series other than the imported mismatch arrangement, there is or will be an excessive PE deduction (see section 259KB),

and in this Chapter “the relevant mismatch” means the mismatch, amount or deduction concerned.

(7) Condition E is that it is reasonable to suppose—

- (a) where subsection (6)(a) applies, that no provision of any of Chapters 3 to 5 or 7 to 10 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of any person in respect of the mismatch payment, or
- (b) where subsection (6)(b) applies, that no provision of Chapter 6 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of the company in relation to which the excessive PE deduction arises.

(8) Condition F is that—

- (a) subsection (6)(a) applies and it is reasonable to suppose that a provision of any of Chapters 3 to 5 or 7 to 10, or an equivalent provision under the law of a territory outside the United Kingdom, would apply in relation to the tax treatment of P if—
  - (i) P were the payer in relation to the mismatch payment,
  - (ii) P were a payee in relation to the mismatch payment, or
  - (iii) where the relevant mismatch is a hybrid payee deduction/non-inclusion mismatch or a hybrid entity double deduction amount, P were an investor in the hybrid entity concerned, or
- (b) the relevant mismatch is an excessive PE deduction.

(9) Condition G is that—

- (a) subsection (6)(a) applies and P is in the same control group (see section 259NB) as the payer, or a payee, in relation to the mismatch payment, at any time in the period—
  - (i) beginning with the day the over-arching arrangement is made, and
  - (ii) ending with the last day of the payment period in relation to the imported mismatch payment,

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- (b) subsection (6)(b) applies and P is in the same control group as the company in relation to whom the excessive PE deduction arises at any time in that period, or
  - (c) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.
- (10) The imported mismatch arrangement, or the over-arching arrangement, is a “structured arrangement” if it is reasonable to suppose that—
- (a) the arrangement concerned is designed to secure the relevant mismatch, or
  - (b) the terms of the arrangement concerned share the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.
- (11) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.
- (12) Section 259KC contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

### **259KB Meaning of “dual territory double deduction”, “excessive PE deduction” and “PE jurisdiction”**

- (1) This section has effect for the purposes of this Chapter.
- (2) A “dual territory double deduction” means an amount that can be deducted by a company both—
- (a) from income for the purposes of a tax charged under the law of one territory, and
  - (b) from income for the purposes of a tax charged under the law of another territory.
- (3) A “PE deduction” is an amount that—
- (a) may (in substance) be deducted from a company's income for the purposes of calculating the company's taxable profits, for a taxable period, for the purposes of a tax that is charged on the company, under the law of a territory (“the PE jurisdiction”), by virtue of the company having a permanent establishment in that territory, and
  - (b) is in respect of a transfer of money or money's worth, from the company in the PE jurisdiction to the company in another territory (“the parent jurisdiction”) in which it is resident for the purposes of a tax, that—
    - (i) is actually made, or
    - (ii) is (in substance) treated as being made for tax purposes.
- [ For the purposes of this section a “PE deduction” does not include—
- <sup>F172</sup>(3A) (a) a debit in respect of amortisation that is brought into account under section 729 or 731 of CTA 2009 (writing down the capitalised cost of an intangible fixed asset), or
- (b) an amount that is deductible in respect of amortisation under a provision of the law of a territory outside the United Kingdom that is equivalent to either of those sections.]
- (4) A PE deduction is “excessive” so far as it exceeds the sum of—



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- (a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and
- (b) any amounts by which a loss made by the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

[ For the purposes of subsection (4) any increase in taxable profits or reduction of losses<sup>F173</sup>(4A) is to be ignored in any case where tax is charged at a nil rate under the law of the parent jurisdiction.]

- (5) A taxable period of the company is “permitted” for the purposes of subsection (4) if—
  - (a) the period begins before the end of 12 months after the end of the taxable period mentioned in subsection (3)(a), or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period for the purposes of subsection (4), and
    - (ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

#### Textual Amendments

**F172** S. 259KB(3A) inserted (retrospectively) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 24\(9\)\(13\)](#)

**F173** S. 259KB(4A) inserted (with effect in accordance with Sch. 7 para. 19(1) of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 7 para. 6](#)

### Counteraction

#### **259KC Denial of the relevant deduction in relation to the imported mismatch payment**

- (1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.
- (2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by the amount of the relevant mismatch.

[ But any reduction under this section has effect subject to section 259KD (deductions<sup>F174</sup>(2A) from dual inclusion income).]

- (3) For corporation tax purposes, where this subsection applies, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by P's share of the relevant mismatch.
- (4) P's share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis—

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- (a) where [<sup>F175</sup>section 259KA(6)(a)] applies, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment, or
  - (b) where the relevant mismatch is an excessive PE deduction, having regard (in particular) to—
    - (i) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the transfer, or
    - (ii) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, the extent to which the imported mismatch payment and each relevant payment would have funded (directly or indirectly) the transfer if it had actually been made.
- (5) For the purposes of subsection (4)(a) and (b)(i), the imported mismatch payment is to be taken to fund the mismatch payment or transfer to the extent that the mismatch payment or transfer cannot be shown instead to be funded (directly or indirectly) by one or more relevant payments.
- (6) For the purposes of subsection (4)(b)(ii), it is to be assumed that the imported mismatch payment would have funded the transfer if it had actually been made to the extent that it cannot be shown by P that, if it had been made, the transfer would have instead been funded (directly or indirectly) by one or more relevant payments.
- (7) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment or any mismatch payment, is a “relevant payment” in relation to the relevant mismatch if it is made under an arrangement in the series of arrangements mentioned in section 259KA(4) and—
- (a) where [<sup>F176</sup>section 259KA(6)(a)] applies, it funds (directly or indirectly) the mismatch payment,
  - (b) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, it funds (directly or indirectly) that transfer, or
  - (c) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, it would have funded (directly or indirectly) that transfer had that transfer actually been made.
- (8) In proceedings before a court or tribunal in connection with this section—
- (a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and
  - (b) in relation to subsection (5), it is for P to show that the mismatch payment or transfer is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

#### Textual Amendments

**F174** S. 259KC(2A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 16\(2\)](#), 19(4)

**F175** Words in s. 259KC(4)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 16\(3\)](#), 19(4)

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**F176** Words in s. 259KC(7)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 7 paras. 16\(3\), 19\(4\)](#)

## **[<sup>F177</sup>259KD] Deductions from dual inclusion income**

- (1) If—
  - (a) section 259KA(6)(a) applies as a result of any of sub-paragraphs (iii) to (vii), or
  - (b) section 259KA(6)(b) applies,a reduction under section 259KC is not to exceed the relevant net amount.
- (2) For the purposes of this section “the relevant net amount” means—
  - (a) if section 259KA(6)(a)(iii), (iv), (v) or (vi) applies, the amount which, if Chapter 5, 7, 8 or 9 applied to the tax treatment of any person in respect of the mismatch payment, could not be deducted from that person’s income under that Chapter (ignoring the effect of any of the carry-forward provisions),
  - (b) if section 259KA(6)(a)(vii) applies, the amount by which the dual territory double deduction of the company mentioned in section 259KB(2) for a deduction period exceeds its dual inclusion income for that period, or
  - (c) if section 259KA(6)(b) applies, the amount by which the excessive PE deduction of the company mentioned in section 259KB(4) for the permitted taxable period mentioned there exceeds its dual inclusion income for that period.
- (3) In subsection (2)(a) “the carry-forward provisions” means—
  - (a) section 259EC(3) (hybrid payer deduction/non-inclusion mismatches),
  - (b) section 259IB(3) to (5) (hybrid entity double deduction mismatches: investor within charge to corporation tax), and
  - (c) section 259IC(5) to (7) (hybrid entity double deduction mismatches: hybrid entity within charge to corporation tax).
- (4) In subsection (2)(b) “dual inclusion income” of a company for a deduction period (that is to say, a period for which the dual territory double deduction is deducted as mentioned in section 259KB(2)(a)) means an amount that is both—
  - (a) ordinary income of the company for that period for the purposes of a tax charged as mentioned in section 259KB(2)(a), and
  - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged as mentioned in section 259KB(2)(b).
- (5) A taxable period of the company is “permitted” for the purposes of subsection (4)(b) if—
  - (a) the period begins before the end of 12 months after the end of the deduction period, or
  - (b) where that period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.
- (6) In subsection (2)(c) “dual inclusion income” of a company for a period means an amount that is both—

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- (a) ordinary income of the company for that period for the purposes of a tax charged under the law of the PE jurisdiction, and
  - (b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.
- (7) A taxable period of the company is “permitted” for the purposes of paragraph (b) of subsection (6) if—
- (a) the period begins before the end of 12 months after the end of the period mentioned in paragraph (a) of that subsection, or
  - (b) where the period begins after that—
    - (i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and
    - (ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.]

#### Textual Amendments

F177 S. 259KD inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 7 paras. 17, 19\(4\)](#)

## CHAPTER 12

### ADJUSTMENTS IN LIGHT OF SUBSEQUENT EVENTS ETC

#### 259L Adjustments where suppositions cease to be reasonable

- (1) Where—
  - (a) a reasonable supposition is made for the purposes of any provision of this Part, and
  - (b) the supposition turns out to be mistaken or otherwise ceases to be reasonable, such consequential adjustments as are just and reasonable may be made.
- (2) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.
- (4) No adjustment is to be made under this section on the basis that an amount of ordinary income arises, as a result of a payment or quasi-payment, to a payee after that payee's last permitted taxable period in relation to the payment or quasi-payment (see section 259LA, which makes provision about certain such cases).

#### 259LA Deduction from taxable total profits where an amount of ordinary income arises late

- (1) This section applies where—
  - (a) a relevant deduction in respect of a payment or quasi-payment is reduced by section 259CD, 259DF, 259GC or 259HC or by more than one of those sections,

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- (b) no other provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, applies or will apply to the tax treatment of any person in respect of the payment or quasi-payment,
  - (c) the section or sections had effect because it was reasonable to suppose that the relevant deduction exceeded, or would exceed, the sum of the amounts of ordinary income arising, by reason of the payment or quasi-payment, to each payee for a permitted taxable period, and
  - (d) an amount of ordinary income (“the late income”) arises—
    - (i) by reason of the payment or quasi-payment, but
    - (ii) not as a consequence of any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom, to a payee for a taxable period (“the late period”) that is not a permitted taxable period.
- (2) An amount equal to the late income may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the payer's taxable total profits of the accounting period in which the late period ends.
- (3) So much of that amount (if any) as cannot be deducted, in accordance with subsection (2), at step 2 in section 4(2) of CTA 2010 in calculating the taxable total profits of the accounting period in which the late period ends—
- (a) is carried forward to subsequent accounting periods of the payer, and
  - (b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.
- (4) But the total amount deducted from taxable total profits under this section, in relation to a payment or quasi-payment, may not exceed the total amount by which the relevant deduction is reduced as mentioned in (1)(a).
- (5) In this section “permitted taxable period”—
- (a) where the relevant deduction was reduced under section 259CD, has the meaning given by section 259CC(2),
  - (b) where the relevant deduction was reduced under section 259DF, has the meaning given by section 259DD(2),
  - (c) where the relevant deduction was reduced under section 259GC, has the meaning given by section 259GB(6),
  - (d) where the relevant deduction was reduced under section 259HC, has the meaning given by section 259HB(4), or
  - (e) where the relevant deduction was reduced under two or more of the sections mentioned in the preceding paragraphs of this subsection, includes any taxable period that is a permitted period under a provision mentioned in the paragraphs concerned.

## **[<sup>F178</sup>259LA] Adjustments in light of later treatment for accounting purposes**

- (1) This section applies where—
- (a) a payment or quasi-payment gives rise to a debit of a company that is recognised for accounting purposes,
  - (b) a relevant deduction of the company in respect of some or all of the debit is reduced by any provision of this Part,

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- (c) there is a reversal of some or all of the debit by a credit of the company that is recognised for accounting purposes after the end of the payment period, and
  - (d) the credit is brought into account for corporation tax purposes.
- (2) Such consequential adjustments as are just and reasonable may be made in respect of so much of the debit as gives rises to the relevant deduction and as is reversed by the credit.
- (3) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (4) The power to make adjustments by virtue of this section may be exercised despite any time limit imposed by or under any enactment.]

#### Textual Amendments

F178 S. 259LB inserted (retrospectively) by Finance Act 2018 (c. 3), Sch. 7 paras. 18, 19(4)

## CHAPTER 13

### ANTI-AVOIDANCE

#### 259M Countering the effect of avoidance arrangements

- (1) This section applies where—
- (a) relevant avoidance arrangements exist,
  - (b) as a result of those arrangements, any person (whether party to the arrangements or not) would, apart from this section, obtain a relevant tax advantage, and
  - (c) that person is—
    - (i) within the charge to corporation tax at the time the person would obtain the relevant tax advantage, or
    - (ii) would be within the charge to corporation tax at that time but for the relevant avoidance arrangements.
- (2) The relevant tax advantage is to be counteracted by making such adjustments to the person's treatment for corporation tax purposes as are just and reasonable.
- (3) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (4) A person obtains a “relevant tax advantage” if—
- (a) the person avoids, to any extent, any provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, restricting whether or how that person may make a deduction from income for the purposes of calculating taxable profits, or
  - (b) the person avoids, to any extent, an amount being treated as income of that person under any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom.

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- (5) “Relevant avoidance arrangements” means arrangements the main purpose, or one of the main purposes, of which is to enable any person to obtain a relevant tax advantage.
- (6) But arrangements are not “relevant avoidance arrangements” if the obtaining of the relevant tax advantage can reasonably be regarded as consistent with the principles on which the provisions of this Part, or the equivalent provisions under the law of a territory outside the United Kingdom, that are relevant to the arrangements are based (whether express or implied) and the policy objectives of those provisions.
- (7) For the purposes of determining the principles and policy objectives mentioned in subsection (6), regard may, where appropriate, be had to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development (“OECD”) on 5 October 2015 or any replacement or supplementary publication.
- (8) In subsection (7) “replacement or supplementary publication” means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that subsection (or any replacement of, or supplement to, it).

## CHAPTER 14

### INTERPRETATION

#### *Financial instruments*

#### **259N Meaning of “financial instrument”**

- (1) A “financial instrument” means—
  - (a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),
  - (b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),
  - (c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),
  - (d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or
  - (e) anything else that is a financial instrument.
- (2) In subsection (1)(e) “financial instrument” has the meaning that it has for the purposes of UK generally accepted accounting practice.
- (3) But “financial instrument” does not include—
  - (a) a hybrid transfer arrangement (within the meaning given by section 259DB), or
  - <sup>[F179]</sup>(b) anything of a description specified in regulations made by the Treasury.]

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F180(4) .....

#### Textual Amendments

**F179** S. 259N(3)(b) substituted (with effect in accordance with s. 19(8)(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 19\(4\)\(a\)](#)

**F180** S. 259N(4) omitted (with effect in accordance with s. 19(8)(9) of the amending Act) by virtue of [Finance Act 2019 \(c. 1\), s. 19\(4\)\(b\)](#)

#### *Relevant investment funds*

#### **259NA Meaning of “relevant investment fund”**

- (1) “Relevant investment fund” means—
- (a) an open-ended investment company within the meaning of section 613 of CTA 2010,
  - (b) an authorised unit trust within the meaning of section 616 of that Act, or
  - (c) an offshore fund within the meaning of section 354 of this Act (see section 355),

which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect).

- (2) “The genuine diversity of ownership condition” means—
- (a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and
  - (b) in the case of an open-ended investment company or an authorised unit trust, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).

#### *Control groups and related persons*

#### **259NB Control groups**

- (1) A person (“A”) is in the same control group as another person (“B”)—
- (a) throughout any period for which they are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 50% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
- (a) their financial results for the period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for the period are in fact comprised in group accounts.
- (3) In subsection (2), “group accounts” means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or



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- (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning with the day—
  - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.
- (5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).
- (6) The 50% investment condition is met in relation to A and B if—
  - (a) A has a 50% investment in B, or
  - (b) a third person has a 50% investment in each of A and B.
- (7) Section 259ND applies for the purposes of determining whether a person has a “50% investment” in another person.

### **259NC Related persons**

- (1) Two persons are “related” on any day that—
  - (a) they are in the same control group (see section 259NB), or
  - (b) the 25% investment condition is met in relation to them.
- (2) The 25% investment condition is met in relation to a person (“A”) and another person (“B”) if—
  - (a) A has a 25% investment in B, or
  - (b) a third person has a 25% investment in each of A and B.
- (3) Section 259ND applies for the purposes of determining whether a person has a “25% investment” in another person.

#### **Modifications etc. (not altering text)**

- C31** S. 259NC applied by 2010 c. 4, s. 356OT(6) (as inserted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 77\(1\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2)))
- C32** S. 259NC applied by 2007 c. 3, s. 517U(6) (as inserted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 79\(1\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2)))

### **259ND Meaning of “50% investment” and “25% investment”**

- (1) Where this section applies for the purposes of determining whether a person has a “50% investment” in another person for the purposes of section 259NB(6), references in this section to X% are to be read as references to 50%.

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- (2) Where this section applies for the purposes of determining whether a person has a “25% investment” in another person for the purposes of section 259NC(2), references in this section to X% are to be read as references to 25%.
- (3) A person (“P”) has an X% investment in a company (“C”) if it is reasonable to suppose that—
- (a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,
  - (b) P possesses or is entitled to acquire X% or more of the voting power in C, or
  - (c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X% or more of the proceeds of the disposal.
- (4) A person (“P”) has an X% investment in another person (“Q”) if it is reasonable to suppose that—
- (a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or
  - (b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.
- (5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.
- (6) For the purposes of subsections (3) and (4), in determining what percentage investment a person (“P”) has in another person (“U”), where P acts together with a third person (“T”) in relation to U, P is to be taken to have all of T's rights and interests in relation to U.
- [<sup>F181</sup>(7) P is to be taken to “act together” with T in relation to U if (and only if) subsection (7A) or (7B) applies.
- (7A) This subsection applies if—
- (a) P and T are party to a partnership agreement that—
    - (i) it is reasonable to suppose is designed to affect the value of any of T's rights or interest in relation to U, or
    - (ii) relates to the exercise of any of T's rights in relation to U, or
  - (b) the same person manages—
    - (i) some or all of P's rights or interests in relation to U, and
    - (ii) some or all of T's rights or interests in relation to U.
- (7B) This subsection applies if P has a relevant investment in U and—
- (a) P and T are connected (within the meaning given by section 163),
  - (b) for the purposes of influencing the conduct of U's affairs—
    - (i) P is able to secure that T acts in accordance with P's wishes,
    - (ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes,
    - (iii) T is able to secure that P acts in accordance with T's wishes, or

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- (iv) P can reasonably be expected to act, or typically acts, in accordance with T's wishes, or
  - (c) P and T are party to any arrangement that—
    - (i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or
    - (ii) relates to the exercise of any of T's rights in relation to U.
- (7C) To determine whether P has a “relevant investment” in U at a particular time, subsections (3) and (4) apply but as if—
- (a) for “an X%”, in both places, there were substituted “ a relevant ”, and
  - (b) for “X% or more”, in each place, there were substituted “ greater than 5% ”.
- (7D) For that purpose—
- (a) subsection (6) is to be ignored, and
  - (b) P's rights and interests are to be aggregated with the rights and interests of persons connected to P (within the meaning given by section 1122 of CTA 2010, ignoring subsection (4) of that section).]
- (8) <sup>F182</sup>... P does not “act together” with T in relation to U under [<sup>F183</sup>paragraph (b) of subsection (7A)] where—
- (a) the person who manages the rights or interests of P mentioned in subparagraph (i) of that paragraph, does so as the operator of a collective investment scheme,
  - (b) that person manages the rights or interests of T mentioned in subparagraph (ii) of that paragraph as the operator of a different collective investment scheme, and
  - (c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U 's affairs.
- (9) In subsection (8) “collective investment scheme” and “operator” have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

#### Textual Amendments

**F181** S. 259ND(7)-(7D) substituted for s. 259ND(7) (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 24\(2\)](#), 36

**F182** Word in s. 259ND(8) omitted (retrospectively) by virtue of [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 24\(3\)\(a\)](#), 36

**F183** Words in s. 259ND(8) substituted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 24\(3\)\(b\)](#), 36

### Partnerships

#### 259NE Treatment of a person who is a member of a partnership

- (1) This section applies where a person is a member of a partnership.
- (2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person's share of (as the case may be) income, profits or an amount of the partnership.

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- (3) For this purpose “the person's share” of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.
- (4) In this section—
- (a) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and
  - (b) “member” of a partnership is to be read accordingly.

### *[<sup>F184</sup>Securitisation companies*

#### Textual Amendments

**F184** S. 259NEZA and cross-heading inserted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 34, 36](#)

### **259NEZ** ~~Securitisation companies~~

- (1) If the tax treatment of a securitisation company would (apart from this section) fall to be adjusted by virtue of provision in this Part, the provision is to be treated as of no effect as regards that company (and accordingly, no such adjustment may be made).
- (2) In this section—
- “securitisation company” means a company to which specified regulations apply;
- “specified regulations” has the meaning given by regulation 2 of the Taxation of Securitisation Companies Regulations 2006 ([S.I. 2006/3296](#)).]

### *[<sup>F185</sup>Priority*

#### Textual Amendments

**F185** S. 259NEA and cross-heading inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 20](#)

### **259NEA** Priority

For the purposes of this Part, the provisions of Part 10 (corporate interest restriction) are to be treated as of no effect.]

### *[<sup>F186</sup>Relevant debt relief circumstances*

#### Textual Amendments

**F186** Ss. 259NEB-259NEF and cross-heading inserted (retrospectively) by [Finance Act 2021 \(c. 26\)](#), [Sch. 7 paras. 5, 36](#)

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### **259NEB Relevant debt relief circumstances: introductory**

- (1) This section applies for the purposes of section 259CB(3).
- (2) Excess arises in “relevant debt relief circumstances” if (and only if)—
  - (a) the payment or quasi-payment mentioned in section 259CB(2) comprises the release of a liability to pay an amount under a debtor relationship (within the meaning given by section 302(6) of CTA 2009), and
  - (b) the circumstances in section 259NEC, 259NED, 259NEE, or 259NEF apply.
- (3) For the purposes of those sections references to—
  - (a) “the relevant release” means the release of liability mentioned in subsection (2)(a),
  - (b) “loan relationship” is to be construed in accordance with section 302 of CTA 2009,
  - (c) “amortised cost basis of accounting” is to be construed in accordance with section 313(4) and (4A) of that Act,
  - (d) “connected companies relationship” is to be construed in accordance with section 348 of that Act, and
  - (e) “deemed release” and “relevant rights” are to be construed in accordance with section 358(3) to (4A) of that Act.

### **259NEC Release of debts**

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—
  - (a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship, and
  - (b) condition A, B, C, D or E is met.
- (3) Condition A is that the release is part of a statutory insolvency arrangement (within the meaning of section 1319 of CTA 2009).
- (4) Condition B is that the release is not a release of relevant rights and is—
  - (a) in consideration of shares forming part of the ordinary share capital of a payee, or
  - (b) in consideration of any entitlement to such shares.
- (5) Condition C is that—
  - (a) a payee meets one of the insolvency conditions (see subsection (8)), and
  - (b) the debtor relationship is not a connected companies relationship.
- (6) Condition D is that the release is in consequence of the making of a mandatory reduction instrument or a third country instrument or the exercise of a stabilisation power under Part 1 of the Banking Act 2009.
- (7) Condition E is that—
  - (a) the release is neither a deemed release nor a release of relevant rights, and
  - (b) immediately before the release, it is reasonable to assume that, without the release and any arrangements of which the release forms part, there would be

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a material risk that at some time within the next 12 months a payee would be unable to pay its debts.

- (8) For the purposes of this section a company meets the insolvency conditions if—
- (a) it is in insolvent liquidation,
  - (b) it is in insolvent administration,
  - (c) it is in insolvent administrative receivership,
  - (d) an appointment of a provisional liquidator is in force in relation to the company under section 135 of the Insolvency Act 1986 or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (e) under the law of a country or territory outside the United Kingdom circumstances corresponding to those mentioned in paragraph (a), (b), (c) or (d) exist.
- (9) Section 323(A1) of CTA 2009 applies for the interpretation of subsection (7)(b); and the rest of that section applies for the interpretation of subsection (8).

#### **259NED Release of connected companies debts**

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—
- (a) the relevant release takes place in an accounting period for which—
    - (i) an amortised cost basis of accounting is used in respect of the debtor relationship, and
    - (ii) the debtor relationship is a connected companies relationship, and
  - (b) the release is neither—
    - (i) a deemed release, nor
    - (ii) a release of relevant rights.

#### **259NEE Release of connected companies debts during creditor's insolvency**

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—
- (a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship,
  - (b) condition A, B, C, D or E in section 357 of CTA 2009 is met in relation to the payer,
  - (c) immediately before the time when any of those conditions was first met the debtor relationship was a connected companies relationship, and
  - (d) immediately after that time it was not such a relationship.

#### **259NEF Corporate rescue: debt released shortly after connection arises**

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—

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- (a) the relevant release takes place within 60 days of the payer and a payee becoming connected with one another (within the meaning of section 363 of CTA 2009), and
  - (b) the corporate rescue conditions are met.
- (3) The corporate rescue conditions are—
- (a) that the payer and the payee became connected as a result of an arm’s length transaction, and
  - (b) immediately before the payer and the payee became connected it was reasonable to assume that, without the connection and any arrangements of which the connection forms part, there would be a material risk that at some point within the next 12 months the payee would have been unable to pay its debts.
- (4) For the purposes of subsection (3)(b), a payee is unable to pay its debts if—
- (a) it is unable to pay its debts as they fall due, or
  - (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.]

### *Definitions*

#### **259NF Definitions**

In this Part—

“arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“CFC” and “CFC charge” have the meaning given by section 259B(4);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“control group” has the meaning given by section 259NB;

“financial instrument” has the meaning given by section 259N;

“foreign CFC” and “foreign CFC charge” have the meaning given by section 259B(4);

“hybrid entity” has the meaning given by section 259BE;

“investor”, in relation to a hybrid entity, has the meaning given by section 259BE(4);

“investor jurisdiction” has the meaning given by section 259BE(4);

“ordinary income” is to be read in accordance with sections 259BC and 259BD;

“payee”—

(a) in relation to a payment, has the meaning given by section 259BB(6)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);

“payee jurisdiction” has the meaning given by 259BB(9);

“payer”—

(a) in relation to a payment, has the meaning given by section 259BB(1)(a), and

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- (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
    - “payment” has the meaning given by section 259BB(1);
    - “payment period”—
  - (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
  - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2);
    - “permanent establishment” has the meaning given by section 259BF;
    - “quasi-payment” has the meaning given by section 259BB(2) to (5);
    - “related” has the meaning given by section 259NC;
    - “relevant deduction”—
  - (a) in relation to a payment, has the meaning given by section 259BB(1)(b), and
  - (b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);
    - “relevant investment fund” has the meaning given by section 259NA;
    - “tax” has the meaning given by section 259B;
    - “taxable period” means—
  - (a) in relation to corporation tax, an accounting period,
  - (b) in relation to income tax, a tax year,
  - (c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371BC(3)),
  - (d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and
  - (e) in relation to any other tax, a period for which the tax is charged;
- “taxable profits” is to be read in accordance with sections 259BC(2) and 259BD(5).]

## F187 PART 7

### TAX TREATMENT OF FINANCING COSTS AND INCOME

#### Textual Amendments

**F187** Pt. 7 repealed (with effect in accordance with Sch. 5 para. 25(1) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 11\(1\)](#)



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## PART 8

### OFFSHORE FUNDS [F188ETC]

#### Textual Amendments

**F188** Word in Pt. 8 heading inserted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(5\)\(b\)\(6\)](#)

#### *Tax treatment of participants in offshore funds*

### **354 Power to make regulations about tax treatment of participants**

- (1) The Treasury may by regulations make provision about the treatment of participants in an offshore fund for the purposes of enactments relating to income tax, corporation tax or capital gains tax.
- (2) Regulations under subsection (1) may, in particular, make special provision about the treatment of participants in an offshore fund comprising—
  - (a) a part of umbrella arrangements (see section 360), or
  - (b) arrangements relating to a class of interest in other arrangements (see section 361).
- (3) Regulations under subsection (1) may, in particular—
  - (a) make provision for an offshore fund, or a trustee or officer of an offshore fund, to make elections relating to the treatment of participants in the offshore fund for the purposes of income tax, corporation tax or capital gains tax,
  - (b) make provision about the supply of information by offshore funds, or trustees or officers of offshore funds—
    - (i) to Her Majesty's Revenue and Customs, or
    - (ii) to participants,
  - (c) make provision about the preparation of accounts and the keeping of records by offshore funds or trustees or officers of offshore funds, and
  - (d) make other provision about the administration of offshore funds.
- (4) Regulations under subsection (1) may, in particular, make provision consequential on the repeal by the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) of Chapter 5 of Part 17 of ICTA (offshore funds).
- (5) Regulations under subsection (1) may, in particular—
  - (a) provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter,
  - (b) make provision by reference to standards or other documents issued by any person,
  - (c) modify an enactment (whenever passed or made),
  - (d) make different provision for different cases or different purposes, and
  - (e) make incidental, consequential, supplementary and transitional provision and savings.

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- (6) Regulations under subsection (1) may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.
- (7) In this section—
- “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978), and
- “modify” includes amend, repeal or revoke.

### **355 Meaning of “offshore fund”**

- (1) In section 354 “offshore fund” means—
- (a) a mutual fund constituted by a body corporate resident outside the United Kingdom,
  - (b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or
  - (c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom.
- (2) Subsection (1)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.
- (3) In this section—
- “body corporate” does not include a limited liability partnership, and
- “co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.
- (4) See also section 151W(b) of TCGA 1992, section 564U(b) of ITA 2007 and section 519(4)(b) of CTA 2009 (which have the effect that investment bond arrangements are not an offshore fund for the purposes of section 354).

### **356 Meaning of “mutual fund”**

- (1) In section 355 “mutual fund” means arrangements with respect to property of any description (including money) that meet conditions A, B and C.
- (2) Subsection (1) is subject—
- (a) to the exceptions made by or under sections 357 and 359, and
  - (b) to sections 360 and 361.
- (3) Condition A is that the purpose or effect of the arrangements is to enable the participants—
- (a) to participate in the acquisition, holding, management or disposal of the property, or
  - (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (4) Condition B is that the participants do not have day-to-day control of the management of the property.

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- (5) For the purposes of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.
- (6) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—
  - (a) the net asset value of the property that is the subject of the arrangements, or
  - (b) an index of any description.
- (7) The Treasury may by regulations amend condition C.
- (8) Regulations under subsection (7) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

### **357 Exceptions to definition of “mutual fund”**

- (1) Arrangements are not a mutual fund for the purposes of section 355 if—
  - (a) condition D is met, and
  - (b) condition E or F is met.
- (2) Condition D is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in section 356(6) only in the event of the winding up, dissolution or termination of the arrangements.
- (3) Condition E is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (4) Condition F is that—
  - (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements,
  - (b) subsection (5), (6) or (7) applies, and
  - (c) the arrangements are not designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.
- (5) This subsection applies if none of the assets that are the subject of the arrangements is a relevant income-producing asset (see section 358).
- (6) This subsection applies if, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.
- (7) This subsection applies if—
  - (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and
  - (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.
- (8) For the purposes of this section the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements

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does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

### **358 Meaning of “relevant income-producing asset”**

- (1) This section has effect for the purposes of section 357.
- (2) An asset is a relevant income-producing asset if it produces income on which, if it were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (but see subsections (3) and (4)).
- (3) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—
  - (a) the asset (taking account of the hedging), or
  - (b) any product of the hedging arrangements.
- (4) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets (as defined by this section).

### **359 Power to make regulations about exceptions to definition of “mutual fund”**

- (1) The Treasury may by regulations amend or repeal any provision of section 357 or 358.
- (2) The Treasury may by regulations provide that arrangements are not a mutual fund for the purposes of section 355—
  - (a) in specified circumstances, or
  - (b) if they are of a specified description.
- (3) Regulations under this section may include provision having effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.
- (4) Regulations under subsection (1) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

### *Supplementary*

### **360 Treatment of umbrella arrangements**

- (1) This section has effect for the purposes of this Part.
- (2) In the case of umbrella arrangements (see section 363)—
  - (a) each part of the umbrella arrangements is to be treated as separate arrangements, and
  - (b) the umbrella arrangements are to be disregarded.
- (3) Subsection (2)(a) is subject to section 361.

### **361 Treatment of arrangements comprising more than one class of interest**

- (1) This section has effect for the purposes of this Part.

*Status: Point in time view as at 12/02/2019.*

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- (2) Where there is more than one class of interest in arrangements (the “main arrangements”)—
  - (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and
  - (b) the main arrangements are to be disregarded.
- (3) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

### **362 Meaning of “participant” and “participation”**

- (1) In this Part references to “participant”, in relation to arrangements (or a fund), are to a person taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise.
- (2) In this Part references (however expressed) to participation, in relation to arrangements (or a fund), are to be read in accordance with subsection (1).

### **363 Meaning of “umbrella arrangements” and “part of umbrella arrangements”**

- (1) In this Part “umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.
- (2) In this Part references to a part of umbrella arrangements are to the arrangements relating to a separate pool.

### **[<sup>F189</sup>363A<sup>F190</sup> Residence of undertakings for collective investment in transferable securities and alterative investment funds]**

[<sup>F191</sup>(1) This section applies to—

- (a) a UCITS which is authorised in a foreign country or territory pursuant to Article 5 of the UCITS Directive, and
- (b) an AIF which is authorised or registered in a foreign country or territory, or is not authorised or registered but has its registered office in a foreign country or territory,

unless the UCITS or AIF is an excluded entity.

- (2) If the UCITS or AIF is a body corporate which (apart from this section) would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax or capital gains tax, the body corporate is instead to be treated as if it were not resident in the United Kingdom.

(2A) A UCITS or AIF is “an excluded entity” if it—

- (a) is a unit trust scheme the trustees of which are UK resident,
- (b) is resident in the United Kingdom by virtue of section 14 of CTA 2009,
- (c) is, or has been, an investment trust with respect to an accounting period, or
- (d) is or has been—

(i) a company UK REIT in relation to an accounting period, or

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- (ii) a member of a group of companies at a time when the group is or was a group UK REIT in relation to an accounting period.
- (2B) The Treasury may, by regulations, modify this section so as to—
- (a) add a description of UCITS or AIF as an excluded entity,
  - (b) provide that a description of UCITS or AIF is no longer an excluded entity, or
  - (c) vary a description of an excluded entity.]
- (3) If, by virtue of section 99<sup>F192</sup>... of TCGA 1992, that Act applies in relation to the [F193UCITS or AIF] as if it were a company, that Act applies as if the company were [F194not resident] in the United Kingdom (if it would not otherwise do so).
- (4) In this section[F195—
- "AIF" has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013,
- "foreign country or territory" means a country or territory outside the United Kingdom,
- "investment trust with respect to an accounting period" is to be construed in accordance with section 1158 of CTA 2010,
- "UCITS" means an undertaking for collective investment in transferable securities,
- "the UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council,
- "company UK REIT in relation to an accounting period" and "group UK REIT in relation to an accounting period" are to be construed in accordance with section 527 of CTA 2010.]]

#### Textual Amendments

- F189** S. 363A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 59](#)
- F190** S. 363A heading substituted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(5\)\(c\)\(6\)](#)
- F191** Ss. 363A(1)-(2B) substituted for s. 363A(1)(2) (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(2\)\(6\)](#)
- F192** Words in s. 363A(3) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Collective Investment Schemes and Offshore Funds \(Amendment of the Taxation of Chargeable Gains Act 1992\) Regulations 2017 \(S.I. 2017/1204\), regs. 1\(1\), 14](#)
- F193** Words in s. 363A(3) substituted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(3\)\(6\)](#)
- F194** Words in s. 363A(3) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 146](#)
- F195** Words in s. 363A(4) substituted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(4\)\(6\)](#)

## PART 9

### AMENDMENTS TO RELOCATE PROVISIONS OF TAX LEGISLATION

#### 364 Oil activities

Schedule 1, which inserts a new Chapter 16A (oil activities) in Part 2 (trading income) of ITTOIA 2005, has effect.

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### **365 Alternative finance arrangements**

Schedule 2, which—

- (a) inserts a new Part 10A in ITA 2007 (see Part 1 of the Schedule),
- (b) inserts a new Chapter 4 in Part 4 of TCGA 1992 (see Part 2 of the Schedule),  
and
- (c) makes other amendments (see Part 3 of the Schedule),

has effect.

### **366 Power to amend the alternative finance provisions**

- (1) The Treasury may by order amend the alternative finance provisions.
- (2) The amendments which may be made by such an order include—
  - (a) the variation of provision already included in the alternative finance provisions, and
  - (b) the introduction into the alternative finance provisions of new provision relating to alternative finance arrangements.
- (3) In subsection (2)(b) “alternative finance arrangements” means arrangements which in the Treasury's opinion—
  - (a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, but
  - (b) achieve a similar effect without including provision for the payment of interest.
- (4) An order under subsection (1) may, in particular—
  - (a) make provision of a kind similar to provision already made by the alternative finance provisions,
  - (b) make other provision about the treatment for the purposes of the Tax Acts of arrangements to which the order applies,
  - (c) make provision generally or only in relation to specified cases or circumstances,
  - (d) make different provision for different cases or circumstances, and
  - (e) make incidental, supplemental, consequential and transitional provision and savings.
- (5) An order making consequential provision under subsection (4)(e) may, in particular, include provision amending a provision of the Tax Acts.
- (6) In this section “the alternative finance provisions” means—
  - (a) section 367A of ICTA,
  - (b) Chapter 4 of Part 4 of TCGA 1992,
  - (c) sections 372A to 372D, Part 10A and section 1005(2A) of ITA 2007,
  - (d) Chapter 6 of Part 6 of CTA 2009,
  - (e) sections 110, 256 to 259 and 1019 of CTA 2010.
- (7) An order under this section that—
  - (a) includes such amendments as are mentioned in subsection (2)(b), or
  - (b) amends an enactment not contained in the alternative finance provisions but contained in an Act,

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may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

### **367 Leasing arrangements: finance leases and loans**

Schedule 3, which inserts—

- (a) a new Part 11A in ITA 2007 (leasing arrangements: finance leases and loans), and
- (b) a new section 37A in TCGA 1992 (consideration on disposal of certain leases),

has effect.

### **368 Sale and lease-back etc**

Schedule 4, which inserts a new Part 12A in ITA 2007 (sale and lease-back etc), has effect.

### **369 Factoring of income etc**

Schedule 5, which inserts new Chapters 5B and 5C (finance arrangements, and loan or credit transactions) in Part 13 of ITA 2007 (anti-avoidance), has effect.

### **370 UK representatives of non-UK residents**

Schedule 6, which inserts—

- (a) new Chapters 2B and 2C in Part 14 of ITA 2007 (income tax: UK representatives of non-UK residents), and
- (b) a new Part 7A in TCGA 1992 (capital gains tax: UK representatives of non-UK residents),

has effect.

### **371 Miscellaneous relocations**

Schedule 7 (amendments to relocate some miscellaneous tax enactments) has effect.

## **[<sup>F196</sup>PART 9A**

### CONTROLLED FOREIGN COMPANIES

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#### **Textual Amendments**

**F196** Pt. 9A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 1](#) (with [ss. 56-58](#))



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## CHAPTER 1

### OVERVIEW

#### 371AA Overview of Part

- (1) A charge (“the CFC charge”) is charged under this Part on UK resident companies which have certain interests in CFCs.
- (2) The CFC charge is charged by reference to the chargeable profits of CFCs.
- (3) A “CFC” is a non-UK resident company which is controlled by a UK resident person or persons (but see subsection (6)).
- (4) Chapter 2 sets out the basic details of the CFC charge, including—
  - (a) the CFC charge gateway (through which profits of a CFC must pass in order to be chargeable profits), and
  - (b) the steps to be taken for charging the CFC charge.
- (5) Chapter 2 is supplemented by Chapters 3 to 17; in particular—
  - (a) Chapter 3 sets out how to determine which (if any) of Chapters 4 to 8 apply in relation to the profits of a CFC,
  - (b) so far as applicable, Chapters 4 to 8 set out how to determine which profits (if any) of a CFC pass through the CFC charge gateway, with—
    - (i) Chapter 4 dealing with profits attributable to UK activities,
    - (ii) Chapter 5 dealing with non-trading finance profits,
    - (iii) Chapter 6 dealing with trading finance profits,
    - (iv) Chapter 7 dealing with profits derived from captive insurance business, and
    - (v) Chapter 8 dealing with cases involving solo consolidation,
  - (c) Chapter 9 sets out exemptions for profits from qualifying loan relationships,
  - (d) Chapters 10 to 14 set out full exemptions from the CFC charge,
  - (e) Chapter 15 sets out how to determine the persons whose interests in a CFC are relevant to the charging of the CFC charge,
  - (f) Chapter 16 sets out how to determine the creditable tax of CFCs (for which credit is given against chargeable profits), and
  - (g) Chapter 17 sets out how to apportion a CFC's chargeable profits and creditable tax among the persons who have relevant interests in the CFC.
- (6) Chapter 18 explains the concept of “control” and also sets out certain cases in which a non-UK resident company is to be taken to be a CFC even though it is not controlled by a UK resident person or persons.
- (7) Chapter 19 explains the concepts of “assumed taxable total profits”, “assumed total profits” and “the corporation tax assumptions” which are referred to in this Part.
- (8) Chapter 20 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.
- (9) Chapter 21 contains provision about the management of the CFC charge, including the collection of sums charged.

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- (10) Chapter 22 contains supplementary provision, including definitions of terms used in this Part.
- (11) Nothing in this Part affects—
- (a) the liability to corporation tax of a non-UK resident company in accordance with section 5(2) and (3) of CTA 2009 (non-UK resident companies within the charge to corporation tax), or
  - (b) the determination of such a company's chargeable profits for corporation tax purposes in accordance with Chapter 4 of Part 2 of CTA 2009.
- (12) This Part is part of the Corporation Tax Acts.

## CHAPTER 2

### THE CFC CHARGE

#### **371BA Introduction to the CFC charge**

- (1) The CFC charge is charged in relation to accounting periods of CFCs in accordance with section 371BC.
- (2) Section 371BC applies in relation to a CFC's accounting period if (and only if)—
  - (a) the CFC has chargeable profits for the accounting period, and
  - (b) none of the exemptions set out in Chapters 10 to 14 applies for the accounting period.
- (3) A CFC's chargeable profits for an accounting period are its assumed taxable total profits for the accounting period determined on the basis—
  - (a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as pass through the CFC charge gateway, and
  - (b) that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).
- (4) “The CFC charge gateway” is explained in section 371BB.
- (5) Subsection (3) is subject to section 371SB(7) and (8) (which relates to settlement income included in a CFC's chargeable profits).

#### **371BB The CFC charge gateway**

- (1) Take the following steps to determine the extent to which a CFC's assumed total profits for an accounting period pass through the CFC charge gateway.
 

*Step 1* In accordance with Chapter 3, determine which (if any) of Chapters 4 to 8 apply for the accounting period. If none of those Chapters applies, none of the CFC's assumed total profits pass through the CFC charge gateway and step 2 is not to be taken.

*Step 2* Determine the extent to which the CFC's assumed total profits fall within any of the Chapters which applies for the accounting period. The CFC's assumed total profits pass through the CFC charge gateway so far as they fall within any of those Chapters.

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- (2) Subsection (1) is subject to—
- (a) Chapter 9 (exemptions for profits from qualifying loan relationships), and
  - (b) section 371JE (which provides for adjustments of profits which would otherwise pass through the CFC charge gateway linked to the exemption set out in Chapter 10).

**Modifications etc. (not altering text)**

**C33** S. 371BB applied (with modifications) by 2009 c. 4, ss. 18H-18HE (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 6** (with Sch. 20 para. 55(2))

**371BC Charging the CFC charge**

- (1) Take the following steps if, as provided for by section 371BA(2), this section applies in relation to a CFC's accounting period.

*Step 1* In accordance with Chapter 15, determine the persons (“the relevant persons”) who have relevant interests in the CFC at any time during the accounting period. If none of the relevant persons is a company which meets the UK residence condition (see subsection (2)), the CFC charge is not charged in relation to the accounting period and no further steps are to be taken.

*Step 2* In accordance with Chapter 16, determine the CFC's creditable tax for the accounting period.

*Step 3* In accordance with Chapter 17, apportion the CFC's chargeable profits and creditable tax among the relevant persons.

*Step 4* Take each relevant person which is a company meeting the UK residence condition and, in accordance with section 371BD, determine if the company is a chargeable company. If there are no chargeable companies, the CFC charge is not charged in relation to the accounting period and step 5 is not to be taken.

*Step 5* The CFC charge is charged on each chargeable company as follows. A sum equal to—

- (a) corporation tax at the appropriate rate on P% of the CFC's chargeable profits, less
- (b) Q% of the CFC's creditable tax,

is charged on the chargeable company as if it were an amount of corporation tax charged on the company for the relevant corporation tax accounting period. This step is subject to sections 371BG [F197 to 371BI] .

- (2) A company meets the UK residence condition if it is UK resident at a time during the accounting period when it has a relevant interest in the CFC.

- (3) For the purpose of taking step 5 in subsection (1) in relation to a chargeable company (“CC”)—

“the appropriate rate”, subject to [F198 subsection (4) and] section 371BH, means—

- (a) the rate of corporation tax applicable to CC's profits of the relevant corporation tax accounting period on which corporation tax is chargeable (see section 4(1) and (2) of CTA 2010), or
- (b) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period,

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“P%” means the percentage of the CFC's chargeable profits apportioned to CC,  
 “Q%” means the percentage of the CFC's creditable tax apportioned to CC, and  
 “the relevant corporation tax accounting period” means CC's accounting period for corporation tax purposes during which the CFC's accounting period ends.

[ In determining “the appropriate rate”, it must be assumed that all of CC's profits of <sup>F199</sup>(4) the relevant corporation tax accounting period on which corporation tax is chargeable are chargeable at the main rate rather than the Northern Ireland rate.]

#### Textual Amendments

**F197** Words in s. 371BC(1) substituted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 3 para. 8**

**F198** Words in s. 371BC(3) inserted (with effect in accordance with s. 5 of the amending Act) by [Corporation Tax \(Northern Ireland\) Act 2015 \(c. 21\)](#), **Sch. 2 para. 2(2)**

**F199** S. 371BC(4) inserted (with effect in accordance with s. 5 of the amending Act) by [Corporation Tax \(Northern Ireland\) Act 2015 \(c. 21\)](#), **Sch. 2 para. 2(3)**

### 371BD Chargeable companies

- (1) A company (“C”) which meets the UK residence condition is a chargeable company for the purposes of step 4 in section 371BC(1) if the total of the following percentages is at least 25%—
  - (a) the percentage of the CFC's chargeable profits apportioned to C at step 3 in section 371BC(1), and
  - (b) the percentages (if any) of those profits which are apportioned at that step to relevant persons who, at any time during the accounting period, are connected or associated with C.
- (2) Subsection (1) is subject to sections 371BE and 371BF.

### 371BE Companies which are managers of offshore funds etc

- (1) A company (“C”) is not a chargeable company for the purposes of step 4 in section 371BC(1) if—
  - (a) the CFC is an offshore fund (as defined in section 355),
  - (b) the genuine diversity of ownership condition set out in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) is met in relation to the fund,
  - (c) C meets the fund management condition, and
  - (d) apart from this section, a sum of no more than £500,000 would be charged on C as a chargeable company at step 5 in section 371BC(1).
- (2) In applying regulation 75 of the 2009 Regulations for the purposes of subsection (1) (b), the reference in paragraph (1) to the period of account is to be read as a reference to the accounting period.
- (3) C meets the fund management condition if at all times during the accounting period when C has relevant interests in the offshore fund—
  - (a) the assets of the offshore fund are managed by C or a person connected with C,

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- (b) C or the person connected with C receives out of those assets fees for managing those assets, and
  - (c) C holds its relevant interests only or mainly for the purpose of attracting participants (as defined in section 362) to the fund who are not connected with C.
- (4) If the accounting period is less than 12 months, the amount specified in subsection (1) (d) is to be reduced proportionately.

### **371BF Companies which are participants in offshore funds**

- (1) A company (“C”) is not a chargeable company for the purposes of step 4 in section 371BC(1) if—
- (a) the CFC is an offshore fund (as defined in section 355),
  - (b) at the relevant time and at all subsequent relevant times, C reasonably believes that the requirement of section 371BD(1) will not be met in relation to it, and
  - (c) the meeting of that requirement in relation to C is in no way attributable to any step—
    - (i) which was taken by C or any person connected or associated with C, and
    - (ii) which, at the time it was taken, could reasonably have been expected to cause that requirement to be met.
- (2) “The relevant time” means—
- (a) the beginning of the accounting period, or
  - (b) if C has no relevant interests in the offshore fund at the beginning of the accounting period, the time when C first has a relevant interest during the accounting period.
- (3) “Subsequent relevant time” means any time during the accounting period at which there is an increase or some other change in the relevant interests in the offshore fund which C has.

### **371BG Companies holding shares as trading assets etc**

- (1) Subsection (2) applies if conditions A to C are met in relation to a relevant interest, or a part of a relevant interest, which a chargeable company (“CC”) has in the CFC at all times during the CFC's accounting period.
- (2) Step 5 in section 371BC(1) is to be taken in relation to CC on the following basis.
- (3) That basis is—
- (a) so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period is to be left out of P%, and
  - (b) so much of Q% as is so attributable is to be left out of Q%.
- (4) Condition A is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares (“the relevant shares”) in the CFC (directly or indirectly).
- (5) Condition B is that any increase in the value of the relevant shares at any time during the relevant corporation tax accounting period is (or would be) income, or brought

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into account in determining any income, of CC chargeable to corporation tax for that period.

- (6) Condition C is that any dividend or other distribution received at any time during the relevant corporation tax accounting period by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.
- (7) Subsection (8) applies if—
- (a) CC has the relevant interest, or the part of a relevant interest, by virtue of section 371OB(3) or (4),
  - (b) the CFC is an offshore fund (as defined in section 355) which does not meet the qualifying investments test in section 493 of CTA 2009, and
  - (c) conditions B and C would be met but for the offshore fund not meeting that test.
- (8) Conditions B and C are to be taken to be met.
- (9) This section is subject to section 371BH.

### **371BH Companies carrying on BLAGAB**

- (1) Subsection (2) applies in relation to a chargeable company (“CC”) if—
- (a) CC carries on basic life assurance and general annuity business during the relevant corporation tax accounting period,
  - (b) the I-E rules apply to CC for the relevant corporation tax accounting period, and
  - (c) the following are met in relation to a relevant interest, or a part of a relevant interest, which CC has in the CFC at all times during the CFC's accounting period—
    - (i) condition D,
    - (ii) condition E or F (or both), and
    - (iii) condition G.
- (2) An additional sum is charged on CC at step 5 in section 371BC(1) and, for this purpose, step 5 is to be taken on the following basis.
- (3) That basis is—
- (a) in paragraph (a) at step 5, the reference to the appropriate rate is to be read as a reference to—
    - (i) the policyholders' rate of tax under section 102 of FA 2012 applicable to the I-E profit for the relevant corporation tax accounting period, or
    - (ii) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period, and
  - (b) any reduction of P% or Q% under section 371BG(3) by reference to any relevant interest of CC is to be ignored, but—
    - (i) P% is to be reduced so that it represents only the policyholders' share of the BLAGAB component of the apportioned profit (see subsections (10) to (12)), and
    - (ii) Q% is to be reduced by the same proportion as P% is reduced under sub-paragraph (i).

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- (4) Condition D is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares (“the relevant shares”) in the CFC (directly or indirectly).
- (5) Condition E is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (6) The requirement is that any increase (or any part of any increase) in the value of the relevant shares which occurs at that time is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (7) Condition F is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (8) The requirement is that any dividend or other distribution (or any part of any dividend or other distribution) received at that time by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (9) Condition G is that the assets which represent the relevant interest, or the part of a relevant interest, during the CFC's accounting period are (to any extent) assets held by CC for the purposes of CC's long-term business.
- (10) “The apportioned profit” means so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period.
- (11) Take the following steps to determine the “BLAGAB component” of the apportioned profit.
  - Step 1* Assume that the apportioned profit is income falling within section 74(1)(j) of FA 2012 paid to CC at the end of the CFC's accounting period.
  - Step 2* Calculate how much of that income would be referable, in accordance with Chapter 4 of Part 2 of FA 2012, to CC's basic life assurance and general annuity business. That amount is the “BLAGAB component” of the apportioned profit.
- (12) The “policyholders' share” of the BLAGAB component of the apportioned profit is equal to the policyholders' share of the I - E profit for the relevant corporation tax accounting period as determined in accordance with the rules contained in Chapter 5 of Part 2 of FA 2012.

**Modifications etc. (not altering text)**

**C34** S. 371BH modified (with effect in accordance with reg. 2(2) of the amending S.I.) by [The Insurance Companies and CFCs \(Avoidance of Double Charge\) Regulations 2012 \(S.I. 2012/3044\)](#), regs. 1(1), 5

**Banking companies**

**E200** **371BI**

- (1) In relation to a chargeable company that is a banking company for the relevant corporation tax accounting period, step 5 in section 371BC(1) is to be taken in accordance with subsections (2) to (5).
- (2) The amount given by paragraph (a) at step 5 is to be increased by an amount equal to—

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$$(PCP - SASA) \times SP$$

where—

“PCP” is P% of the CFC's chargeable profits;

“SASA” is so much (if any) of the chargeable company's available surcharge allowance as the company specifies for the purposes of this subsection in its company tax return for the relevant corporation tax accounting period;

“SP” is the percentage specified in section 269DA(1) of CTA 2010 (surcharge on banking companies).

- (3) Subsection (5) applies in relation to the chargeable company if—
- (a) there are arrangements that result in a relevant transfer, and
  - (b) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on the chargeable company at step 5 in section 371BC(1) in consequence of subsection (2).
- (4) There is a “relevant transfer” if there is, in substance—
- (a) a transfer (directly or indirectly) of all or a significant part of the chargeable profits of the CFC, for the CFC's accounting period, to a non-banking company, or
  - (b) a transfer (directly or indirectly) of a loss or deductible amount to the CFC, for the CFC's accounting period, from a non-banking company, resulting in the elimination or significant reduction of the CFC's chargeable profits for that period.
- (5) For the purposes of subsection (2), the CFC's chargeable profits are to be taken to be what they would have been had the relevant transfer not taken place.
- (6) Subsections (7) to (9) apply in relation to an accounting period of a CFC (“the relevant CFC accounting period”) where—
- (a) a company (“C”)—
    - (i) has an accounting period for corporation tax purposes during which the relevant CFC accounting period ends, and
    - (ii) is a banking company for that accounting period,
  - (b) there are arrangements that—
    - (i) do not result in a relevant transfer, but
    - (ii) disregarding subsections (7) to (9), would result in some or all of the CFC's chargeable profits for the relevant CFC accounting period being apportioned to one or more non-banking companies at step 3 in section 371BC(1) instead of being apportioned to C, and
  - (c) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on C at step 5 in section 371BC(1) in consequence of subsection (2) (whether in relation to the relevant CFC accounting period or any other accounting period of the CFC).
- (7) If the arrangements would otherwise result in C not having a relevant interest in the CFC, C is to be treated as having the relevant interest in the CFC.
- (8) The CFC's chargeable profits and creditable tax for the relevant CFC accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).



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- (9) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the result of the arrangements mentioned in subsection (6)(b)(ii).
- (10) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “available surcharge allowance” means available surcharge allowance under section 269DE or (as the case may be) 269DJ of CTA 2010;
- “banking company” has the same meaning as in Chapter 4 of Part 7A of CTA 2010 (see section 269DO of that Act);
- “deductible amount” means—
- an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),
  - an expense of a UK property business or overseas property business,
  - an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,
  - a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and relationships treated as such) (see section 301(2) of that Act), or
  - a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act);
- “company tax return” has the same meaning as in Schedule 18 to FA 1998;
- “non-banking company” means a company that, at any time when the arrangements mentioned in subsection (3) or (as the case may be) (6) have effect, is neither—
- a banking company, nor
  - a CFC in relation to which a banking company is a chargeable company.
- (11) Sections 269DE(6) and 269DJ(5) of CTA 2010 contain restrictions on the amount of available surcharge allowance that can be specified and section 269DK of that Act makes provision about what happens if those restrictions are exceeded.]

#### Textual Amendments

**F200** S. 371BI inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 3 para. 9](#)

## CHAPTER 3

### THE CFC CHARGE GATEWAY: DETERMINING WHICH (IF ANY) OF CHAPTERS 4 TO 8 APPLIES

#### 371CA Does Chapter 4 apply?

- Chapter 4 (profits attributable to UK activities) applies for a CFC's accounting period unless condition A, B, C or D is met.
- Condition A is that, at no time during the accounting period, does the CFC hold assets or bear risks under an arrangement to which both subsections (3) and (4) apply.

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- (3) This subsection applies to an arrangement if—
- (a) the main purpose, or one of the main purposes, of the arrangement is to reduce or eliminate any liability of any person to tax or duty imposed under the law of the United Kingdom, and
  - (b) in consequence of the arrangement, at any time the CFC expects its business to be more profitable than it would otherwise be (other than negligibly so).
- (4) This subsection applies to an arrangement if—
- (a) there is an expectation that, as a consequence of the arrangement, one or more persons will have liabilities to tax or duty imposed under the law of any territory reduced or eliminated, and
  - (b) it is reasonable to suppose that, but for that expectation, the arrangement would not have been made.
- (5) Condition B is that, at no time during the accounting period, does the CFC have any UK managed assets or bear any UK managed risks (see subsection (9)).
- (6) Condition C is that, at all times during the accounting period, the CFC has itself the capability to ensure that the CFC's business would be commercially effective were—
- (a) the UK managed assets of the CFC, and
  - (b) the UK managed risks borne by the CFC,
- to stop being UK managed.
- (7) In subsection (6) the reference to the capability of the CFC includes (in particular) its capability to select persons not connected with it to provide it with goods or services and to manage the transactions it has with persons not connected with it.
- (8) In determining if the requirements of subsection (6) are met at any time (“the relevant time”) during the accounting period, assume—
- (a) that the CFC would continue to carry on the same business as it is actually carrying on at the relevant time, and
  - (b) that no relevant UK activities (see subsection (10)) by which any asset or risk was UK managed would be replaced—
    - (i) by activities carried on by any person connected with the CFC at any time, or
    - (ii) in any other way which relies to any extent upon the CFC receiving (directly or indirectly) resources or other assistance from a person connected with it at any time.
- (9) An asset or risk is “UK managed” if—
- (a) the acquisition, creation, development or exploitation of the asset, or
  - (b) the taking on, or bearing, of the risk,
- is managed or controlled to any significant extent by way of relevant UK activities.
- (10) “Relevant UK activities” means activities carried on in the United Kingdom—
- (a) by the CFC, otherwise than through a UK permanent establishment, or
  - (b) by companies connected with the CFC under arrangements which would not, it is reasonable to suppose, be entered into by companies not connected with each other.
- (11) Condition D is that the CFC's assumed total profits consist only of one or both of the following—

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- (a) non-trading finance profits;
- (b) property business profits.

**Modifications etc. (not altering text)**

**C35** Pt. 9A Ch. 3 applied (with modifications) by 2009 c. 4, s. 18HA (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

**371CB Does Chapter 5 apply?**

- (1) Subject to sections 371CC and 371CD, Chapter 5 (non-trading finance profits) applies for a CFC's accounting period if (and only if) the CFC has non-trading finance profits.
- (2) In this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding any profits falling within subsection (3) or (4) or Chapter 8 (solo consolidation).
- (3) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a trade—
  - (a) which is carried on by the CFC, and
  - (b) no trading profits of which pass through the CFC charge gateway for the accounting period.
- (4) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a UK property business or overseas property business carried on by the CFC.
- (5) Neither subsection (3) nor subsection (4) applies in relation to funds—
  - (a) held only or mainly because of a prohibition or restriction on the CFC paying dividends or making other distributions imposed under—
    - (i) the law of the territory in which the CFC is incorporated or formed,
    - (ii) the articles of association or other document regulating the CFC, or
    - (iii) any arrangement entered into by or in relation to the CFC,
  - (b) held with a view to paying dividends or making other distributions at a time after the end of the relevant 12 month period,
  - (c) held with a view to acquiring shares in any company or making any capital contribution to a person,
  - (d) held with a view to acquiring, developing or otherwise investing in land at a time after the end of the relevant 12 month period,
  - (e) held only or mainly for contingencies, or
  - (f) held only or mainly for the purpose of reducing or eliminating a liability of any person to tax or duty imposed under the law of any territory.
- (6) Subsection (5)(a) does not cover a prohibition or restriction which ceases to have effect before the end of the relevant 12 month period.
- (7) “The relevant 12 month period” means the period of 12 months after the end of the accounting period.
- (8) In the case of a chargeable company which makes a claim under Chapter 9, in this section and Chapter 5 references to the CFC's non-trading finance profits are to those

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profits excluding also the CFC's qualifying loan relationship profits (as defined in Chapter 9).

### **371CC Incidental non-trading finance profits: the 5% rule**

- (1) This section applies in relation to a CFC's accounting period if one or both of the following requirements is met—
  - (a) the CFC has trading profits or property business profits (or both);
  - (b) the CFC has exempt distribution income and, at all times during the accounting period, a substantial part of its business is the holding of shares or securities in companies which are its 51% subsidiaries.
- (2) Chapter 5 does not apply for the accounting period if the CFC's non-trading finance profits are no more than 5% of the relevant amount.
- (3) “The relevant amount” is—
  - (a) if the requirement of subsection (1)(a) is met, the total of the CFC's trading profits and property business profits determined before deduction of interest or any tax or duty imposed under the law of any territory,
  - (b) if the requirement of subsection (1)(b) is met, the total of the CFC's exempt distribution income, or
  - (c) if both those requirements are met, the sum of the totals given by paragraphs (a) and (b).
- (4) Subsection (5) applies for the purposes of subsection (2) if—
  - (a) the requirement of subsection (1)(b) is met (whether or not the requirement of subsection (1)(a) is also met),
  - (b) at any time during the accounting period, a 51% subsidiary of the CFC (“the CFC subsidiary”) is also a CFC, and
  - (c) the CFC subsidiary has relevant non-trading finance profits as determined in accordance with subsection (6) or (7).
- (5) The CFC subsidiary's relevant non-trading finance profits are to be added to the CFC's non-trading finance profits.
- (6) If—
  - (a) the CFC subsidiary has an accounting period (“the relevant period”) which is the same as the CFC's accounting period or otherwise falls wholly within the CFC's accounting period, and
  - (b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,
 the CFC subsidiary's “relevant non-trading finance profits” are its non-trading finance profits for the relevant period.
- (7) If—
  - (a) the CFC subsidiary has an accounting period (“the relevant period”) which otherwise overlaps with the CFC's accounting period, and
  - (b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,
 the CFC subsidiary's “relevant non-trading finance profits” are a just and reasonable proportion of its non-trading finance profits for the relevant period.

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- (8) In this section references to the CFC's trading profits are to those profits excluding any of them which pass through the CFC charge gateway for the accounting period.
- (9) “Exempt distribution income” means any dividends or other distributions which are not brought into account in determining the CFC's assumed total profits on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).
- (10) This section needs to be read with section 371CD.

### **371CD Incidental non-trading finance profits: the further 5% rule**

- (1) This section applies in relation to a CFC's accounting period if—
  - (a) the requirements of section 371CC(1)(a) and (b) are both met, but
  - (b) the CFC's non-trading finance profits (as added to under section 371CC(5) if applicable) are more than 5% of the relevant amount for the purposes of section 371CC(2).
- (2) Chapter 5 does not apply for the accounting period if the CFC's adjusted non-trading finance profits are no more than 5% of the total of the CFC's exempt distribution income (as defined in section 371CC(9)).
- (3) The CFC's “adjusted non-trading finance profits” are its non-trading finance profits excluding any profits falling within section 371CB(3) or (4).
- (4) Subsection (5) applies if any CFC subsidiary's relevant non-trading finance profits are added under section 371CC(5) to the CFC's non-trading finance profits for the purposes of section 371CC(2).
- (5) The CFC subsidiary's relevant non-trading finance profits are also to be added to the CFC's adjusted non-trading finance profits for the purposes of subsection (2) above.

### **371CE Does Chapter 6 apply?**

- (1) Subject to what follows, Chapter 6 (trading finance profits) applies for a CFC's accounting period if (and only if)—
  - (a) the CFC has trading finance profits, and
  - (b) at any time during the accounting period, the CFC has funds or other assets which derive (directly or indirectly) from UK connected capital contributions.
- (2) The CFC's trading finance profits are to be treated for the purposes of this Part as if they were non-trading finance profits (and, accordingly, Chapter 6 cannot apply for the accounting period) if—
  - (a) the CFC is a group treasury company in the accounting period [<sup>F201</sup>(see section 371CEA)], and
  - (b) a notice is given to an officer of Revenue and Customs requesting that the CFC's trading finance profits be treated as if they were non-trading finance profits.
- (3) Profits treated as non-trading finance profits under subsection (2) are not to be taken to fall within section 371CB(3) or (4).

<sup>F202</sup>(4) . . . . .

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<sup>F202</sup>(5) .....

- (6) A notice under subsection (2)(b)—
- (a) may be given only by a company or companies determined under subsection (7) or (8), and
  - (b) must be given—
    - (i) within 20 months after the end of the accounting period, or
    - (ii) within such longer period as an officer of Revenue and Customs may allow.
- (7) A company may give a notice if—
- (a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (8) Two or more companies may together give a notice if—
- (a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (9) In subsections (7) and (8) “X%” means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the accounting period.

#### Textual Amendments

**F201** Words in s. 371CE(2)(a) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 21(2)(a)

**F202** S. 371CE(4)(5) omitted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by virtue of Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 21(2)(b)

#### <sup>F203</sup> Section 371CE: meaning of “group treasury company”

<sup>F203</sup>371CEA

- (1) This section makes provision for determining whether the CFC is a group treasury company in the accounting period for the purposes of section 371CE.
- (2) The CFC is a group treasury company in the accounting period if—
- (a) it is a member of a worldwide group in relation to a period of account in which the accounting period wholly or partly falls,
  - (b) throughout the accounting period—
    - (i) all, or substantially all, of the activities undertaken by it consist of treasury activities undertaken for the group, and
    - (ii) all, or substantially all, of its assets and liabilities relate to such activities, and
  - (c) at least 90% of its relevant income for the accounting period is group treasury revenue.

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- (3) For the purposes of this section a company undertakes treasury activities for the group if it does one or more of the following in relation to, or on behalf of, the group or any of its members—
- (a) managing surplus deposits of money or overdrafts,
  - (b) making or receiving deposits of money,
  - (c) lending money,
  - (d) subscribing for or holding shares in a company which is a UK group company undertaking treasury activities for the group at least 90% of whose relevant income is group treasury revenue for its relevant accounting period,
  - (e) investing in debt securities, and
  - (f) hedging assets, liabilities, income or expenses.
- (4) For the purposes of this section “group treasury revenue”, in relation to a company, means revenue—
- (a) arising from the treasury activities that the company undertakes for the group, and
  - (b) accounted for as such under generally accepted accounting practice, before any deduction (whether for expenses or otherwise).
- (5) But revenue consisting of a dividend or other distribution is not group treasury revenue of the company unless it is from a company that meets the conditions in subsection (3) (d).
- (6) In this section—
- “debt security” has the same meaning as in the Handbook made by the Financial Conduct Authority or Prudential Regulation Authority under the Financial Services and Markets Act 2000 (as the Handbook in question has effect from time to time),
- “period of account” has the same meaning as in Part 10,
- “relevant accounting period” has the same meaning as in Part 10,
- “relevant income”, in relation to a company, means income—
- (a) arising from the activities of the company, and
  - (b) accounted for as such under generally accepted accounting practice, before any deduction (whether for expenses or otherwise),
- “UK group company” has the same meaning as in Part 10, and
- “worldwide group” has the same meaning as in Part 10.]

#### Textual Amendments

**F203** S. 371CEA inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 21(3)**

### 371CF Does Chapter 7 apply?

- (1) Chapter 7 (captive insurance business) applies for a CFC's accounting period if (and only if)—
- (a) at any time during the accounting period, the main part of the CFC's business is insurance business, and

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- (b) the CFC's assumed total profits include amounts falling within subsection (2).
- (2) An amount falls within this subsection if it derives (directly or indirectly) from—
- (a) a contract of insurance which is entered into with—
    - (i) a UK resident company connected with the CFC, or
    - (ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or
  - (b) a contract of insurance which—
    - (i) is entered into with a UK resident person, and
    - (ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.
- (3) In subsection (2)(b)(ii)—
- “services” does not include services provided as part of insurance business, and
  - “UK connected company” means—
    - (a) a UK resident company connected with the CFC, or
    - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

### **371CG Does Chapter 8 apply?**

- (1) Chapter 8 (solo consolidation) applies for a CFC's accounting period if (and only if) condition A or B is met.
- (2) Condition A is that, at any time during the accounting period—
  - (a) the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the [F204PRA Handbook] , and
  - (b) the CFC's parent undertaking in relation to that waiver is a UK resident company.
- (3) Condition B is that, at any time during the accounting period—
  - (a) the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC,
  - (b) the UK resident bank must meet requirements of the [F205PRA Handbook] in relation to its capital,
  - (c) any fall in the value of the shares held in the CFC would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets those requirements of the [F205PRA Handbook] , and
  - (d) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares in the CFC is to obtain a tax advantage for itself or any company connected with it.
- (4) In this section—
  - [F206“the PRA Handbook” means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time), and]
  - “UK resident bank” means a UK resident person carrying on banking business.



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- (5) The Treasury may by regulations amend this Chapter or Chapter 8 as they consider appropriate to take account of—
- (a) any changes to the [F207PRA Handbook] , or
  - (b) any relevant document published by the [F208Financial Conduct Authority or the Prudential Regulation Authority] from time to time.
- (6) “Relevant document” means—
- (a) a document which replaces the [F209PRA Handbook] , or
  - (b) a document which changes or replaces a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

#### Textual Amendments

- F204** Words in s. 371CG(2)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 13(5)(a)**
- F205** Words in s. 371CG(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 13(5)(b)**
- F206** Words in s. 371CG(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 13(5)(c)**
- F207** Words in s. 371CG(5)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 13(5)(d)(i)**
- F208** Words in s. 371CG(5)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 13(5)(d)(ii)**
- F209** Words in s. 371CG(6)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 13(5)(e)**

## CHAPTER 4

### THE CFC CHARGE GATEWAY: PROFITS ATTRIBUTABLE TO UK ACTIVITIES

#### Modifications etc. (not altering text)

- C36** Pt. 9A Ch. 4 applied (with modifications) by 2009 c. 4, s. 18HB (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 20 para. 6)**

#### 371DA Introduction to Chapter

- (1) Take the steps set out in section 371DB(1) to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).
- (2) In this Chapter references to the CFC's assumed total profits are to those profits excluding its non-trading finance profits and property business profits (if any).
- (3) For the purposes of this Chapter—
- (a) “the OECD Report” means the Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-operation and Development (“OECD”) dated 22 July 2010,

*Status: Point in time view as at 12/02/2019.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) terms used which are also used in the OECD Report have the same meaning as they have in the OECD Report,
  - (c) “the CFC group” means the CFC taken together with the companies with which it is connected as those companies may change from time to time,
  - (d) “the provisional Chapter 4 profits” has the meaning given at step 7 in section 371DB(1),
  - (e) “the relevant assets and risks” has the meaning given at step 1 in section 371DB(1), subject to any exclusions at step 2 or 6,
  - (f) “SPF” means a significant people function or a key entrepreneurial risk-taking function,
  - (g) an SPF is a “UK SPF” so far as the SPF is carried out in the United Kingdom—
    - (i) by the CFC, otherwise than through a UK permanent establishment, or
    - (ii) by a company connected with the CFC, and
  - (h) an SPF is a “non-UK SPF” so far as it is not a UK SPF.
- (4) The Treasury may by regulations amend this Chapter as they consider appropriate to take account of any relevant document published by OECD from time to time.
- (5) “Relevant document” means—
- (a) a document which replaces, updates or supplements the report mentioned in subsection (3)(a), or
  - (b) a document which replaces, updates or supplements a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

### **371DB The steps**

- (1) Here are the steps referred to in section 371DA(1).

The steps are to be taken in accordance with the principles set out in the OECD Report (so far as relevant).

*Step 1* Identify the assets which the CFC has or has had, and the risks which the CFC bears or has borne, and from which amounts included in the CFC's assumed total profits have arisen. The identified assets and risks are called “the relevant assets and risks”

*Step 2* Exclude from the relevant assets and risks any asset or risk to which subsection (2) applies (subject to subsections (3) and (4)).

*Step 3* Identify the SPFs carried out by the CFC group which are relevant to—

- (a) the economic ownership of the assets included in the relevant assets and risks, or
- (b) the assumption and management of the risks included in the relevant assets and risks.

For this purpose, assume that the CFC group is a single company.

*Step 4* Determine the extent to which the SPFs identified at step 3 are UK SPFs and the extent to which they are non-UK SPFs. If none of the SPFs is a UK SPF to any extent, then no profits fall within this Chapter and no further steps are to be taken.

*Step 5* Assume that the UK SPFs determined at step 4 are carried out by a permanent establishment which the CFC has in the United Kingdom and,

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accordingly, determine the extent to which the assets and risks included in the relevant assets and risks would be attributed to the permanent establishment. For this purpose, assume that the non-UK SPFs determined at step 4 are all carried out by the CFC itself (if that is not otherwise the case).

*Step 6* Exclude from the relevant assets and risks any asset or risk, or any assets or risks taken together, to which section 371DC applies.

*Step 7* Re-determine the CFC's assumed total profits on the basis that the CFC—

- (a) does not hold, or has not held, the assets included in the relevant assets and risks, and
- (b) does not bear, or has not borne, the risks included in the relevant assets and risks,

so far as they would be attributed to the permanent establishment mentioned at step 5. “The provisional Chapter 4 profits” are the CFC's assumed total profits so far as they are left out of the re-determined profits.

*Step 8* Exclude from the provisional Chapter 4 profits any amounts which are required to be excluded by section 371DD, 371DE or 371DF. The remaining profits (if any) fall within this Chapter.

- (2) This subsection applies to an asset or risk if the CFC's assumed total profits are only negligibly higher than what they would be if the CFC—
  - (a) did not hold, or had not held, the asset to any extent at all, or
  - (b) did not bear, or had not borne, the risk to any extent at all.
- (3) The total number of assets and risks which may be excluded at step 2 in subsection (1) is limited as follows.
- (4) As well as applying to each asset and risk separately, subsection (2) must also apply to all the assets and risks included in the total number taken together.

### **371DC Exclusion: UK activities a minority of total activities**

- (1) For the purposes of step 6 in section 371DB(1), this section applies to an asset or risk included in the relevant assets and risks if amount A is no more than 50% of amount B.
- (2) Amount A is the total of—
  - (a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—
    - (i) not held the asset, or
    - (ii) not borne the risk,so far as it would be attributed to the permanent establishment mentioned at step 5 in section 371DB(1), and
  - (b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—
    - (i) not held the asset, or
    - (ii) not borne the risk,so far as it would be so attributed.
- (3) Amount B is the total of—

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- (a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—
    - (i) not held the asset to any extent at all, or
    - (ii) not borne the risk to any extent at all, and
  - (b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—
    - (i) not held the asset to any extent at all, or
    - (ii) not borne the risk to any extent at all.
- (4) Subsection (5) applies if it is not reasonably practicable to separate a number of assets or risks included in the relevant assets and risks for the purpose of determining amounts A and B in relation to each of those assets or risks separately.
- (5) In subsections (1) to (3) references to an asset or risk are to be read as references to those assets or risks taken together.

### **371DD Exclusion: economic value**

- (1) Subsection (2) applies if—
- (a) an asset or risk is included in the relevant assets and risks,
  - (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1), and
  - (c) as a result of that determination, an amount is included in the provisional Chapter 4 profits.
- (2) The amount is to be excluded from the provisional Chapter 4 profits if—
- (a) the net economic value to the CFC group which results from the holding of the asset, or the bearing of the risk, exceeds what that value would have been had the asset been held, or the risk been borne, solely by UK resident companies connected with the CFC, and
  - (b) the relevant non-tax value is a substantial proportion of the excess value mentioned in paragraph (a).
- (3) “Net economic value” does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of any territory outside the United Kingdom.
- (4) “The relevant non-tax value” is the excess value mentioned in subsection (2)(a) so far as it does not derive (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of the United Kingdom.
- (5) Subsection (6) applies if—
- (a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.

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- (6) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

### **371DE Exclusion: independent companies' arrangements**

- (1) Subsection (2) applies if—
- (a) an asset or risk is included in the relevant assets and risks,
  - (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1),
  - (c) as a result of that determination, an amount is included in the provisional Chapter 4 profits, and
  - (d) the UK SPFs are carried out by companies connected with the CFC under arrangements made between the CFC and those companies.
- (2) The amount is to be excluded from the provisional Chapter 4 profits if it is reasonable to suppose that, were the SPFs which are UK SPFs not to be carried out by companies connected with the CFC, the CFC would enter into arrangements with companies not connected with the CFC which—
- (a) would be structured in the same way as the arrangements mentioned in subsection (1)(d), and
  - (b) would, in relation to the CFC's business, have the same commercial effect as those arrangements.
- (3) Subsection (4) applies if—
- (a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.
- (4) In subsection (1) references to an asset or risk are to be read as references to those assets or risks taken together.

### **371DF Exclusion: trading profits (the basic rule)**

- (1) All trading profits are to be excluded from the provisional Chapter 4 profits if the following conditions are met—
- (a) the business premises condition (see section 371DG),
  - (b) the income condition (see section 371DH),
  - (c) the management expenditure condition (see section 371DI),
  - (d) the IP condition (see section 371DJ), and
  - (e) the export of goods condition (see section 371DK).
- (2) Trading profits are also to be excluded from the provisional Chapter 4 profits in accordance with section 371DI(7) and (8) (so far as applicable).
- (3) This section is subject to section 371DL (anti-avoidance).

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### **371DG Exclusion: trading profits (business premises condition)**

- (1) This section applies for the purposes of section 371DF(1)(a).
- (2) The business premises condition is met if, at all times during the accounting period, the CFC has in the territory in which it is resident for the accounting period premises—
  - (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
  - (b) from which the CFC's activities in that territory are wholly or mainly carried on.
- (3) “Premises” means—
  - (a) an office, shop, factory or other building or part of a building,
  - (b) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, or
  - (c) a building site or the site of a construction or installation project, but only if the building work or project has a duration of at least 12 months.

### **371DH Exclusion: trading profits (income condition)**

- (1) This section applies for the purposes of section 371DF(1)(b).
- (2) The income condition is met if no more than 20% of the CFC's relevant trading income derives (directly or indirectly) from—
  - (a) UK resident persons, or
  - (b) UK permanent establishments of non-UK resident companies.
- (3) For the purposes of subsection (2) the CFC's “relevant trading income” is its trading income, excluding any income arising from the sale in the United Kingdom of goods produced by the CFC in the territory in which it is resident for the accounting period.
- (4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, the CFC's main business is banking business in relation to which the CFC is regulated in the territory in which it is resident for the accounting period.
- (5) The income condition is met if the CFC's relevant UK trading income is no more than 10% of the CFC's trading income.
- (6) The CFC's “relevant UK trading income” is its trading income so far as it derives (directly or indirectly) from—
  - (a) UK resident persons, or
  - (b) UK permanent establishments of non-UK resident companies,
 but excluding interest received from UK resident companies which are connected or associated with the CFC.
- (7) Neither subsection (2)(a) nor subsection (6)(a) covers income deriving (directly or indirectly) from a UK resident company if—
  - (a) the company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
  - (b) an expense corresponding to the income is brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

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### **371DI Exclusion: trading profits (management expenditure condition)**

- (1) This section applies for the purposes of section 371DF(1)(c).
- (2) The management expenditure condition is met if the UK related management expenditure is no more than 20% of the total related management expenditure.
- (3) “The total related management expenditure” is the total of the following expenditure incurred during the accounting period by the CFC—
  - (a) expenditure incurred in the employment of any member of the CFC's staff who carries out relevant management functions,
  - (b) expenditure incurred in the engagement (directly or indirectly) of any individual who is not a member of the CFC's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the CFC, and
  - (c) expenditure incurred in the engagement (directly or indirectly) of any company related to the CFC so far as the expenditure represents expenditure incurred by the related company in—
    - (i) the employment of any member of the related company's staff who carries out relevant management functions, or
    - (ii) the engagement by the related company (directly or indirectly) of any individual who is not a member of the related company's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the related company.
- (4) “The UK related management expenditure” is the total related management expenditure so far as it relates to members of staff or other individuals who carry out relevant management functions in the United Kingdom.
- (5) A person carries out a “relevant management function” if the person manages or controls any assets or risks included in the relevant assets and risks.
- (6) This covers (for example) a person who formulates plans or makes decisions in relation to—
  - (a) the acquisition, creation, development or exploitation of such assets, or
  - (b) the taking on, or bearing, of such risks.
- (7) Subsection (8) applies if—
  - (a) the conditions mentioned in section 371DF(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,
  - (b) there is an asset or risk which is included in the relevant assets and risks and to which any part of the total related management expenditure relates,
  - (c) the 50% condition is met in relation to that asset or risk, and
  - (d) trading profits arising from that asset or risk are included in the provisional Chapter 4 profits.
- (8) The trading profits are to be excluded from the provisional Chapter 4 profits.
- (9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure so far as relating to the asset or risk is no more than 50% of the total related management expenditure so far as relating to the asset or risk.
- (10) Subsection (11) applies if—

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- (a) any part of the total related management expenditure relates to a number of assets or risks included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the total related management expenditure relates to each of those assets or risks separately.
- (11) Subsections (7) to (9) apply in relation to those assets or risks taken together and references to an asset or risk are to be read accordingly.

### **371DJ Exclusion: trading profits (IP condition)**

- (1) This section applies for the purposes of section 371DF(1)(d).
- (2) The IP condition is met unless—
  - (a) the CFC's assumed total profits include amounts arising from intellectual property held by the CFC (“the exploited IP”),
  - (b) all or parts of the exploited IP were—
    - (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
    - (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  - (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  - (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.
- (3) The significance condition is met if—
  - (a) the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
  - (b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits are significantly higher than what they would otherwise have been.
- (4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—
  - (a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
  - (b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.
- (5) “The relevant period” means the period covering the accounting period and the 6 years before the accounting period.

### **371DK Exclusion: trading profits (export of goods condition)**

- (1) This section applies for the purposes of section 371DF(1)(e).



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- (2) The export of goods condition is met if no more than 20% of the CFC's trading income arises from goods exported from the United Kingdom, excluding goods exported from the United Kingdom to the territory in which the CFC is resident for the accounting period.

### **371DL Exclusion: trading profits (anti-avoidance)**

- (1) This section applies if—
  - (a) a condition mentioned in section 371DF(1) is met, or
  - (b) the 50% condition mentioned in section 371DI is met in relation to an asset or risk (or a number of assets or risks taken together),but it is reasonable to suppose that that would not be the case apart from an arrangement falling within subsection (3).
- (2) The condition is to be taken not to be met or (as the case may be) not to be met in relation to the asset or risk (or the assets or risks taken together).
- (3) An arrangement falls within this subsection if—
  - (a) the arrangement involves the CFC group organising (or reorganising) a significant part of its business in a particular way, and
  - (b) the main purpose, or one of the main purposes, of that organising (or reorganising) is to secure that—
    - (i) one or more of the conditions mentioned in section 371DF(1) are met, or
    - (ii) the 50% condition mentioned in section 371DI is met in relation to one or more assets or risks.

## **CHAPTER 5**

### **THE CFC CHARGE GATEWAY: NON-TRADING FINANCE PROFITS**

#### **Modifications etc. (not altering text)**

**C37** Pt. 9A Ch. 5 applied (with modifications) by 2009 c. 4, s. 18HC (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

### **371EA The basic rule**

- (1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are its non-trading finance profits so far as they fall within any of sections 371EB to 371EE.
- (2) In this Chapter references to the CFC's non-trading finance profits are to be read in accordance with section 371CB(2) and, so far as applicable, section 371CB(8).

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### **371EB UK activities**

- (1) To determine the extent to which the CFC's non-trading finance profits fall within this section, take steps 1 to 5 and 7 in section 371DB(1) as if references in section 371DB to the CFC's assumed total profits were references to its non-trading finance profits.
- (2) Non-trading finance profits fall within this section so far as they would be included in the provisional Chapter 4 profits as determined on the basis mentioned in subsection (1).

### **371EC Capital investment from the UK**

- (1) Non-trading finance profits fall within this section so far as they arise from relevant UK funds or other assets.
- (2) Subsection (3) applies in relation to any profits which (apart from subsection (3)) would fall within this section if—
  - (a) an amount of expenditure incurred by the CFC in managing the relevant UK funds or other assets itself was brought into account in calculating the profits, and
  - (b) it is reasonable to suppose that the amount of expenditure is less than the fee which a company not connected with the CFC would charge the CFC for carrying out the same management activities.
- (3) There is to be deducted from the profits an amount representing what it is reasonable to suppose the difference between the amount of expenditure and the fee would be.
- (4) “Relevant UK funds or other assets” means—
  - (a) funds or other assets which represent, or derive (directly or indirectly) from, any capital contribution to the CFC made (directly or indirectly) by a UK connected company (whether in relation to an issue of shares in the CFC or otherwise),
  - (b) funds or other assets which represent, or derive (directly or indirectly) from, any amounts included in the CFC's chargeable profits for any earlier accounting period in relation to which the CFC charge is charged,
  - (c) funds or other assets which represent, or derive (directly or indirectly) from, any amounts which, by virtue of section 174 (transfer pricing: claims by disadvantaged person), are left out of account in determining the CFC's assumed total profits for the accounting period or any earlier accounting period, or
  - (d) funds or other assets—
    - (i) which represent, or derive (directly or indirectly) from, any funds or other assets received by the CFC (directly or indirectly) from a UK connected company, and
    - (ii) which are not covered by paragraphs (a) to (c).
- (5) In subsection (4)(d)(i) the reference to funds or other assets received by the CFC does not include funds or other assets received—
  - (a) in exchange for goods or services provided by the CFC, or
  - (b) by way of a loan.
- (6) “UK connected company” means—
  - (a) a UK resident company connected with the CFC, or

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- (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

### 371ED Arrangements in lieu of dividends etc to UK resident companies etc

- (1) Non-trading finance profits fall within this section so far as they arise from an arrangement <sup>F210</sup>... in relation to which the following condition is met.
- (2) The condition is that—
  - (a) the arrangement is made by the CFC (directly or indirectly)—
    - (i) with a UK resident company connected with the CFC, or
    - (ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and
  - (b) it is reasonable to suppose—
    - (i) that the arrangement is made as an alternative to the CFC paying dividends or making any other distribution to the other company (directly or indirectly), and
    - (ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

#### Textual Amendments

**F210** Words in s. 371ED(1) omitted (retrospective to 1.1.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 3, 21](#)

### 371EE Leases to UK resident companies etc

- (1) Non-trading finance profits fall within this section so far as they arise from a relevant finance lease in relation to which the following condition is met.
- (2) The condition is that—
  - (a) the lease is made by the CFC (directly or indirectly)—
    - (i) with a UK resident company connected with the CFC, or
    - (ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and
  - (b) it is reasonable to suppose—
    - (i) that the lease is made as an alternative to the other company purchasing (directly or indirectly) the asset [<sup>F211</sup> (“the relevant asset”) which is the subject of the lease or making (directly or indirectly) an arrangement which would fall within subsection (3)], and
    - (ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

- [ An arrangement would fall within this subsection if—
- <sup>F212</sup>(3) (a) the arrangement would meet one or both of the following requirements—
    - (i) it would not be a relevant finance lease;

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- (ii) it would not involve the CFC, and  
 (b) under the arrangement the other company would (directly or indirectly) purchase rights to use the relevant asset.]

#### Textual Amendments

**F211** Words in s. 371EE(2)(b)(i) substituted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 4\(2\), 21](#)

**F212** S. 371EE(3) inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 4\(3\), 21](#)

## CHAPTER 6

### THE CFC CHARGE GATEWAY: TRADING FINANCE PROFITS

#### 371FA The basic rule

- (1) Take the following steps to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

This is subject to regulations under section 371FD or 371FE.

*Step 1* Determine if, during the accounting period, the CFC's free capital exceeds what it is reasonable to suppose its free capital would be were it a company which is not the 51% subsidiary of any other company. If there is excess free capital, “the step 1 amount” is—

- (a) the excess free capital, or  
 (b) if less, the CFC's free capital so far as deriving (directly or indirectly) from UK connected capital contributions.

*Step 2* This step applies only if the CFC carries on insurance business during the accounting period; if it does not, go straight to step 3. Determine if, during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose its free assets would be were it a company which is not the 51% subsidiary of any other company. If there is excess free assets, “the step 2 amount” is—

- (a) the excess free assets, or  
 (b) if less, the CFC's free assets so far as deriving (directly or indirectly) from UK connected capital contributions.

*Step 3* If no excesses are determined at steps 1 and 2, no profits fall within this Chapter. Otherwise, the profits falling within this Chapter are the CFC's trading finance profits so far as it is reasonable to suppose that those profits arise from the investment or other use of the step 1 amount or the step 2 amount (or both

- (2) For the purposes of step 1 in subsection (1) the CFC's “free capital” is the funding it has for its business so far as the funding does not give rise to debits which are brought into account in determining the CFC's non-trading finance profits or trading finance profits.
- (3) For the purposes of step 2 in subsection (1) the CFC's “free assets” is the amount by which the value of its assets exceeds its loan capital.
- (4) Subsections (2) and (3) are subject to sections 371FB and 371FC and subsection (3) is also subject to subsection (6).

*Status: Point in time view as at 12/02/2019.*

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- (5) Subsection (6) applies if—
- (a) the CFC, acting outside its insurance business, gives a guarantee against losses of an insurance business of another company which is connected with the CFC,
  - (b) the guarantee is necessary for the purpose of meeting regulatory requirements applicable to the other company's insurance business,
  - (c) in consequence of having given the guarantee, the CFC is required by regulatory requirements applicable to its insurance business to hold more assets than it would otherwise be required to hold, and
  - (d) during the accounting period, the CFC holds assets solely for the purpose of meeting that requirement for more assets.
- (6) The value of the assets held by the CFC as mentioned in subsection (5)(d) is to be deducted from the CFC's free assets.
- (7) For the purposes of this section the “value” of an asset is the amount which it is reasonable to suppose the CFC would obtain for the transfer of all the CFC's rights in respect of the asset from a person not connected with the CFC.

**Modifications etc. (not altering text)**

**C38** S. 371FA(1) excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Controlled Foreign Companies \(Excluded Banking Business Profits\) Regulations 2012 \(S.I. 2012/3041\)](#), regs. 1(2), **3(2)**

**371FB Qualifying loan relationships**

- (1) Subsection (2) applies if, during the CFC's accounting period, the CFC is the ultimate debtor in relation to a qualifying loan relationship (within the meaning of Chapter 9) of another CFC (“the creditor CFC”).
- (2) E% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) “E%” is given by the following formula—

$$100 \% \times \frac{EP}{P}$$

where—

EP is the total amount of the profits of the qualifying loan relationship which are exempt, and

P is the total amount of the profits of the qualifying loan relationship.

- (4) For the purposes of subsection (3)—
  - (a) references to the profits of the qualifying loan relationship are to the profits of the qualifying loan relationship for accounting periods of the creditor CFC which fall wholly or partly in the CFC's accounting period,
  - (b) the profits of the qualifying loan relationship for an accounting period of the creditor CFC are to be determined in accordance with Chapter 9,

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- (c) the steps in subsection (5) are to be taken to determine the amount of the profits of the qualifying loan relationship for an accounting period of the creditor CFC which are “exempt”, and
  - (d) the profits of the qualifying loan relationship for an accounting period of the creditor CFC which falls only partly in the CFC's accounting period, and the amount of those profits which are exempt, are to be apportioned between—
    - (i) the part of the creditor CFC's accounting period which falls in the CFC's accounting period, and
    - (ii) the part which does not,
 with only those profits, and the amount of exempt profits, apportioned to the part mentioned in sub-paragraph (i) being included in P or EP (as the case may be).
- (5) Here are the steps referred to in subsection (4)(c).

The steps are to be taken separately in relation to each chargeable company which makes a claim under Chapter 9 in relation to the creditor CFC's accounting period.

The amount of the profits of the qualifying loan relationship for the creditor CFC's accounting period which are exempt is the total of the amounts given by step 2.

*Step 1* Determine the amount of the profits of the qualifying loan relationship for the accounting period which, in the case of the chargeable company, are exempt under Chapter 9.

*Step 2* Multiply the amount determined at step 1 by P% (as defined in section 371BC(3), ignoring sections 371BG(3)(a) and 371BH(3)(b)).

### **371FC Loans from foreign permanent establishments of UK resident companies**

- (1) Subsection (2) applies if—
  - (a) there is a company (“C”) which has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
  - (b) during a relevant accounting period of C which begins on or after 1 January 2013, C has a creditor relationship which, applying the assumptions set out in section 18H(3) of CTA 2009 in relation to C for the relevant accounting period, would be a qualifying loan relationship (within the meaning of Chapter 9 of this Part) of C in relation to which the CFC would be the ultimate debtor,
  - (c) in the application of section 18H(2) of CTA 2009 for the relevant accounting period, C makes a claim under Chapter 9 of this Part (as applied by section 18H(2)), and
  - (d) the relevant accounting period falls wholly or partly in the CFC's accounting period.
- (2) 75% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) Terms used in this section which are defined in section 18A of CTA 2009 have the meaning given by that section.

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### **371FD Exclusion: banking business**

- (1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from banking business, or banking business of a specified description, carried on by the CFC.
- (2) Regulations under subsection (1) may (in particular) make provision by reference to—
  - (a) the territory in which a CFC is resident or any territory in which its banking business is regulated or carried on, or
  - (b) the regulatory requirements imposed from time to time in any territory in relation to banking business.

### **371FE Exclusion: insurance business**

- (1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from insurance business, or insurance business of a specified description, carried on by the CFC.
- (2) In subsection (1) “insurance business” does not include insurance business so far as consisting of the effecting or carrying out of contracts of insurance covered by section 371GA(2) (UK insurance contracts), including the investment of premiums received from such contracts.
- (3) Regulations under subsection (1) may (in particular) make provision by reference to—
  - (a) the territory in which a CFC is resident or any territory in which its insurance business is regulated or carried on, or
  - (b) the regulatory requirements imposed from time to time in any territory in relation to insurance business.

## **CHAPTER 7**

### **THE CFC CHARGE GATEWAY: CAPTIVE INSURANCE BUSINESS**

#### **Modifications etc. (not altering text)**

- C39** Pt. 9A Ch. 7 applied (with modifications) by 2009 c. 4, s. 18HD (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

### **371GA The basic rule**

- (1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits so far as they—
  - (a) arise from the CFC's insurance business,
  - (b) fall within subsection (2), and
  - (c) fall within subsection (7) where applicable.
- (2) An amount falls within this subsection if it derives (directly or indirectly) from—

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- (a) a contract of insurance which is entered into with—
    - (i) a UK resident company connected with the CFC, or
    - (ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or
  - (b) a contract of insurance which—
    - (i) is entered into with a UK resident person, and
    - (ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.
- (3) In subsection (2)(b)(ii)—
- “services” does not include services provided as part of insurance business, and
  - “UK connected company” means—
    - (a) a UK resident company connected with the CFC, or
    - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.
- (4) Subsection (2)(a)(i) does not cover a premium paid under a contract of insurance if—
- (a) the UK resident company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
  - (b) the premium is wholly brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.
- (5) Subsection (2)(a) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (2)(a).
- (6) Subsection (7) applies in relation to an amount if—
- (a) the CFC is resident in an EEA state for the accounting period, and
  - (b) the amount does not arise from the activities of a permanent establishment which the CFC has in a territory which is not an EEA state.
- (7) An amount falls within this subsection so far as it derives (directly or indirectly) from a contract of insurance if—
- (a) the insured has no significant UK non-tax reason for entering into the contract of insurance, or
  - (b) if the contract of insurance is a contract of reinsurance, the original insured has no significant UK non-tax reason for entering into the original contract of insurance.
- (8) “UK non-tax reason” means a reason other than one relating to a liability, or potential liability, of any person to tax or duty imposed under the law of the United Kingdom.
- (9) In this section “original contract of insurance”, in relation to a contract of reinsurance which is one in a chain of contracts of reinsurance, means the original contract of insurance reinsured by the first contract in the chain; and in subsection (7)(b) the reference to the original insured is to be read accordingly.



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## CHAPTER 8

### THE CFC CHARGE GATEWAY: SOLO CONSOLIDATION

#### 371HA The basic rule

- (1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits which are not also included in the CFC's relevant profits amount.
- (2) The CFC's “relevant profits amount” is what the relevant profits amount would be for the purposes of Chapter 3A of Part 2 of CTA 2009 (see section 18A(6) of that Act) in relation to the CFC were that amount to be determined as if—
  - (a) the CFC were a permanent establishment in a territory outside the United Kingdom of the UK resident company mentioned in section 371CG(2)(b) or the UK resident bank mentioned in section 371CG(3), and
  - (b) the CFC's accounting period were a relevant accounting period of that UK resident company or UK resident bank for the purposes of that Chapter.

## CHAPTER 9

### EXEMPTIONS FOR PROFITS FROM QUALIFYING LOAN RELATIONSHIPS

#### Modifications etc. (not altering text)

**C40** Pt. 9A Ch. 9 applied (with modifications) by 2009 c. 4, s. 18HE (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

#### 371IA The basic rule

- (1) This Chapter applies if—
  - (a) apart from this Chapter, Chapter 5 (non-trading finance profits) would apply for a CFC's accounting period,
  - (b) the CFC's non-trading finance profits include qualifying loan relationship profits, and
  - (c) the business premises condition set out in section 371DG is met.
- (2) A chargeable company (“company C”) in relation to the accounting period may make a claim to an officer of Revenue and Customs for step 2 in section 371BB(1) (the CFC charge gateway) to be taken, in the case of company C only, subject to this Chapter.
- (3) If company C makes a claim, in the case of company C only, the CFC's qualifying loan relationship profits pass through the CFC charge gateway so far as (and only so far as) they are not exempt under this Chapter.
- (4) The CFC's “qualifying loan relationship profits” are [<sup>F213</sup>so much of the profits of all its qualifying loan relationships taken together as are non-trading finance profits which—
  - (a) fall within section 371EC (capital investment from the UK), and
  - (b) do not fall within section 371EB (UK activities).]

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- (5) The extent to which those profits are “exempt” is to be determined—
  - (a) firstly, by applying either section 371IB or section 371ID to each of the CFC's qualifying loan relationships, and
  - (b) secondly, by applying section 371IE (if relevant).
- (6) Section 371IF sets out how to determine the profits of a qualifying loan relationship.
- (7) Sections 371IG to 371II define “qualifying loan relationship” etc.
- (8) Section 371IJ contains provision about claims under this Chapter.
- (9) In this Chapter references to the CFC's non-trading finance profits are to those profits excluding any profits—
  - (a) falling within section 371CB(3) or (4) or Chapter 8 (solo consolidation), or
  - (b) arising from a relevant finance lease.
- (10) In this Chapter—
  - (a) “loan relationship” has the meaning given by section 302(1) of CTA 2009 (and does not include anything which, although not falling within section 302(1), is treated for any purpose as if it were a loan relationship), and
  - (b) other terms used which are defined in Part 5 of CTA 2009 are to be read accordingly.
- (11) See section 371CB(8) which deals with the interaction between this Chapter and section 371CB and Chapter 5 in the case of a chargeable company which makes a claim under this Chapter.

#### **Textual Amendments**

**F213** Words in s. 371IA(4) substituted (with effect in accordance with s. 20(5)(6) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 20\(2\)](#)

### **371IB Loans funded out of qualifying resources**

- (1) This section applies to a qualifying loan relationship if company C's claim under this Chapter states that this section is to apply to the qualifying loan relationship.
- (2) X% of the profits of the qualifying loan relationship are exempt if company C's claim establishes—
  - (a) that, at all times during the relevant period, at least X% of the principal outstanding on the relevant loan (as that may vary from time to time during the relevant period) is funded by the CFC wholly out of qualifying resources, and
  - (b) that the ultimate debtor in relation to the qualifying loan relationship (see section 371IG(2) to (7)) is resident at all times during the relevant period in one territory only and that its territory of residence does not change at any time during the relevant period.
- (3) “X%” is the percentage specified in company C's claim for the purposes of this section in relation to the qualifying loan relationship (which may be 100%).
- (4) “The relevant period” means—
  - (a) the accounting period, or

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- (b) if for any part of the accounting period no principal is outstanding on the relevant loan, the part of the accounting period during which there is principal outstanding.
- (5) “The relevant loan” means the loan which is the subject of the qualifying loan relationship.
- (6) “Qualifying resources” means—
- (a) profits of the CFC's business so far as it consists of the making of loans to relevant members of the CFC group which are used solely for the purposes of the business of the CFC group in the relevant territory, or
  - (b) funds or other assets received by the CFC in relation to shares held by the CFC in, or issued by the CFC to, members of the CFC group.
- (7) Funds or other assets received by the CFC fall within subsection (6)(b) only so far as they derive (directly or indirectly) from—
- (a) profits of the business of the CFC group in the relevant territory,
  - (b) the qualifying value of relevant pre-acquisition funds or other assets (see section 371IC), or
  - (c) an issue of shares which meets the following requirements—
    - (i) the shares are shares in a member of the CFC group (“the parent member”) which is not the 75% subsidiary of any company,
    - (ii) the shares are ordinary shares which are not redeemable, and
    - (iii) the shares are issued to persons who are not members of the CFC group.
- (8) Subsection (9) applies if the qualifying loan relationship is made under, or is otherwise connected (directly or indirectly) with, an arrangement under which a member of the CFC group incurs a debt in the United Kingdom to—
- (a) a non-UK resident person, or
  - (b) a UK resident person who is not a member of the CFC group.
- (9) It is to be assumed for the purposes of subsection (2) that, at all times during the relevant period, the amount of funds or other assets—
- (a) out of which the principal outstanding on the relevant loan is funded by the CFC, and
  - (b) which are not qualifying resources,
- is no less than the amount of the debt mentioned in subsection (8).
- [ Subsection (9) does not apply if the debt incurred by the member of the CFC group
- <sup>F214</sup>(9A) as mentioned in subsection (8) represents the principal on a loan made to the member to which subsection (9B) or (9D) applies.
- (9B) This subsection applies to a loan if the member repays it within 48 hours of the loan being made.
- (9C) But subsection (9B) does not apply to a loan if the repayment of the loan within the 48 hours occurs under, or is connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to ensure that subsection (9) does not apply because of—
- (a) the loan, or
  - (b) any other debt which a member of the CFC group incurs (or is expected to incur) in the United Kingdom.

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- (9D) This subsection applies to a loan if—
- (a) there is an issue of shares which meets the requirements of subsection (7)(c) (i) to (iii),
  - (b) the loan was made before the issue of shares but with the expectation that it would be repaid by the member out of funds deriving (directly or indirectly) from the issue of shares,
  - (c) the loan is repaid by the member out of such funds within the period of 6 months beginning with the day on which the loan was made, and
  - (d) the loan—
    - (i) was made by a person who was not a member of the CFC group, and
    - (ii) was not made (wholly or partly nor directly or indirectly) out of funds or other assets provided by a member of the CFC group.]
- (10) For the purposes of this section and section 371IC—
- (a) subject to subsections (11) and (12), “the CFC group”, as at any time, means the CFC taken together with the companies with which it is connected at that time,
  - (b) a member of the CFC group is “relevant” if it is resident in the relevant territory and no other territory,
  - (c) “the relevant territory” means the territory of residence of the ultimate debtor mentioned in subsection (2)(b),
  - (d) references to the business of the CFC group in the relevant territory do not include the making of loans to persons resident outside the relevant territory,
  - (e) references to the profits of the business of the CFC group in the relevant territory do not include—
    - (i) profits arising (directly or indirectly) from funds or other assets received by relevant members of the CFC group in relation to shares held by them in members of the CFC group which are not relevant members, or
    - (ii) so far as not covered by sub-paragraph (i), profits arising (directly or indirectly) from the business of the CFC group in any territory outside the relevant territory, and
  - (f) section 931U of CTA 2009 (definitions of “ordinary share” and “redeemable”) applies as it applies for the purposes of Part 9A of CTA 2009 (company distributions).
- (11) If the CFC is controlled by one UK resident company only (“the controller”), in relation to any time before the CFC came to be controlled by the controller, except in subsection (6), references to the CFC group include references to the controller taken together with any companies with which it is connected at that time.
- (12) If the CFC is controlled by two or more UK resident companies which are all connected with each other (“the controllers”), in relation to any time—
- (a) before which the CFC came to be controlled by the controllers, and
  - (b) at which the controllers (or those of the controllers which exist at that time) are all connected with each other,
- except in subsection (6), references to the CFC group include references to the controllers (or those of the controllers which exist) taken together with any other companies with which they are all connected at that time.

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### Textual Amendments

**F214** Ss. 371IB(9A)-(9D) inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 19, 21](#)

## 371IC What is the “qualifying value” of “relevant pre-acquisition funds or other assets”?

- (1) This section applies for the purposes of section 371IB(7)(b).
- (2) It applies if—
  - (a) a member of the CFC group acquires shares in a company (“the target company”) from persons who are not members of that group (“the unconnected persons”),
  - (b) in consideration for the acquisition of the shares, a member of the CFC group (“the parent member”) which is not the 51% subsidiary of any company issues shares to the unconnected persons, and
  - (c) the value of the consideration given for the acquisition of the shares by the parent member and any other members of the CFC group represents wholly or partly the value or a part of the value of any funds or other assets held by the target company.
- (3) Those funds or other assets are “relevant pre-acquisition funds or other assets” and, subject to what follows, their value or the part of their value represented by the value of the consideration is their “qualifying value”.
- (4) The qualifying value is to be reduced by Y% if one or both of the following paragraphs applies—
  - (a) the issue of shares by the parent member to the unconnected persons represents only part of the consideration given for the acquisition of the shares in the target company;
  - (b) in connection with the acquisition of the shares in the target company, an extraordinary distribution is made to persons holding shares in the parent member.
- (5) “Y%” is given by the following formula—

$$100 \% \times \frac{B}{A + B}$$

where—

A is the value of the consideration which is in the form of the issue of shares by the parent member to the unconnected persons, and

B is, as the case may be—

- (a) the value of the consideration which is not in the form of the issue of shares by the parent member to the unconnected persons,
- (b) the value of the extraordinary distribution, or
- (c) the total of the values given by paragraphs (a) and (b).

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### **3711D The 75% exemption**

- (1) This section applies to a qualifying loan relationship if section 3711B does not apply to the qualifying loan relationship.
- (2) 75% of the profits of the qualifying loan relationship are exempt.

### **[<sup>F215</sup>3711E] The “matched interest profits” exemption**

- (1) This section applies if—
  - (a) there are profits of qualifying loan relationships which are not exempt after sections 3711B and 3711D have been applied to each qualifying loan relationship,
  - (b) the relevant corporation tax accounting period (as defined in section 371BC(3)) of company C is a relevant accounting period of it in relation to a period of account of a worldwide group,
  - (c) the CFC's accounting period ends in that period of account, and
  - (d) apart from this section, the profits mentioned in paragraph (a) would be included in the chargeable profits of the CFC.
- (2) In this section “the matched interest profits” means so much of the profits mentioned in subsection (1)(a) as remain after excluded credits and excluded debits are left out of account.
- (3) If the aggregate net tax-interest expense of the group for the period is nil, all of the matched interest profits are exempt.
- (4) Otherwise, there is a more limited exemption if the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies exceeds the aggregate net tax-interest expense of the group for the period.
- (5) For the purposes of this section “the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies” is determined as follows.
 

*Step 1* For each relevant chargeable company (including C) determine the percentage (P%) of the CFC's chargeable profits that are apportioned to the company under step 5 of section 371BC(1).

*Step 2* For each relevant chargeable company (including C) multiply P% by the matched interest profits.

*Step 3* The sum of the amounts for each company found under step 2 is “the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies”.
- (6) For the purposes of this section a company is a relevant chargeable company if the relevant corporation tax accounting period of the company is a relevant accounting period in relation to the period of account of the group.
- (7) The limited exemption is given effect by treating the matched interest profits as equal to the amount found by multiplying the amount that they would otherwise be by—

E RPMIP

where—

E is the amount of the excess mentioned in subsection (4), and

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RPMIP is the relevant proportion of the matched interest profits apportioned to C or other relevant chargeable companies.

- (8) For the purposes of this section the aggregate net tax-interest expense of a worldwide group for a period of account is determined in accordance with Part 10 (corporate interest restriction) but without regard to debits, credits or other amounts arising from—
- (a) banking business carried on by a company within the charge to corporation tax, or
  - (b) insurance business carried on by a company within the charge to corporation tax.
- (9) For the purposes of this section—
- “excluded credit” has the meaning given by section 386(3),
  - “excluded debit” has the meaning given by section 383(3), and
  - “period of account”, “relevant accounting period” and “worldwide group” have the same meanings as in Part 10.]

#### Textual Amendments

**F215** S. 371IE substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 22(2)**

### 371IF Determining the profits of a qualifying loan relationship

Take the following steps to determine the profits of a qualifying loan relationship for the purposes of this Chapter.

*Step 1* Determine the credits from the qualifying loan relationship which are brought into account in determining the CFC's non-trading finance profits. The result is “the step 1 credits”.

*Step 2* Determine the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship) entered into by the CFC as a hedge of risk in connection with the qualifying loan relationship, and
- (b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 1 credits and if the debits exceed the credits subtract the deficit from the step 1 credits. The result is “the step 2 credits”.

*Step 3* Allocate to the qualifying loan relationship a just and reasonable proportion of the credits from the CFC's relevant debtor relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 2 credits). Add the credits to the step 2 credits. The result is “the step 3 credits”. A debtor relationship of the CFC is “relevant” if the loan which is the subject of it is used by the CFC to fund the loan which is the subject of the qualifying loan relationship

*Step 4* Allocate to the qualifying loan relationship a just and reasonable proportion of the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

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- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship or a relevant debtor relationship) entered into by the CFC as a hedge of risk in connection with a relevant debtor relationship, and
- (b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 3 credits and if the debits exceed the credits subtract the deficit from the step 3 credits. The result is “the step 4 credits”.

*Step 5* Allocate to the qualifying loan relationship a just and reasonable proportion of—

- (a) the debits from the CFC's loan relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 4 credits), and
- (b) any amounts set off under Chapter 16 [<sup>F216</sup>or Chapter 16A] of Part 5 of CTA 2009 (non-trading deficits) against amounts which, apart from the set off, would be included in the CFC's non-trading finance profits.

Reduce the step 4 credits accordingly to give the profits of the qualifying loan relationship.

#### **Textual Amendments**

**F216** Words in s. 371IF Step 5 inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 179](#)

### **371IG What is a “qualifying loan relationship”?**

- (1) In this Chapter “qualifying loan relationship” means a creditor relationship of the CFC—
- (a) the ultimate debtor in relation to which is a qualifying company, and
  - (b) which is not prevented from being a qualifying loan relationship by section 371IH.

- (2) In this Chapter “the ultimate debtor”, in relation to a creditor relationship of the CFC, means the debtor in relation to the creditor relationship.

This is subject to what follows.

- (3) Subsection (4) or (5) (as the case may be) applies if—
- (a) there is a loan (“loan A”) which is the subject of a creditor relationship of the CFC,
  - (b) loan A, or a part of loan A, is made and used to fund (directly or indirectly) another loan (“loan B”) to a person (“P”), and
  - (c) loan B, or a part of loan B, is not made and used to fund (directly or indirectly) a further loan to any person.
- (4) If all of loan A is made and used to fund (directly or indirectly) loan B, the ultimate debtor in relation to the CFC's creditor relationship mentioned in subsection (3)(a) is P.
- (5) If only part of loan A is made and used to fund (directly or indirectly) loan B—



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- (a) that part of loan A is to be treated for the purposes of this Chapter as a separate loan giving rise to a separate creditor relationship of the CFC, and
  - (b) the ultimate debtor in relation to that separate creditor relationship is P.
- (6) If the requirement of subsection (3)(c) is met in relation to a part of loan B only, in subsections (4) and (5) references to loan B are to be read as references to that part of loan B only.
- (7) But neither subsection (4) nor subsection (5) applies if—
- (a) the debtor (“D”) in relation to the CFC's creditor relationship is a qualifying company the main business of which is banking business or insurance business,
  - (b) the use of loan A, or the part of loan A, as mentioned in subsection (3)(b) occurs in the ordinary course of D's banking business or insurance business (as the case may be), and
  - (c) P is not a UK resident qualifying company.
- (8) In this section “qualifying company” means a company which—
- (a) is connected with the CFC, and
  - (b) is controlled by the UK resident person or persons who control the CFC.

### **371IH Exclusions from definition of “qualifying loan relationship”**

- (1) If the ultimate debtor in relation to a creditor relationship of the CFC is a non-UK resident company, the creditor relationship cannot be a qualifying loan relationship so long as some or all of the company's debits—
- (a) are being brought into account for the purposes of Chapter 4 of Part 2 of CTA 2009 (UK permanent establishments of non-UK resident companies) in determining the company's profits which are attributable to a UK permanent establishment, or
  - (b) are being brought into account for the purposes of Part 3 of ITTOIA 2005 (property income) in determining the company's profits of a UK property business.
- (2) If the ultimate debtor in relation to a creditor relationship of the CFC is a UK resident company, the creditor relationship can be a qualifying loan relationship only so long as—
- (a) an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) is in effect in relation to the company, and
  - (b) all the company's debits are being brought into account for the purpose of determining exemption adjustments in relation to the company under that section.
- (3) If the ultimate debtor in relation to a creditor relationship of the CFC is another CFC, the creditor relationship cannot be a qualifying loan relationship so long as—
- (a) some or all of the other CFC's debits are relevant to the application of Chapters 3 to 8 or Chapter 12 in the case of the other CFC, and
  - (b) as a result of that, the CFC charge is not being charged in relation to the other CFC's accounting periods or any sums charged are less than what they would otherwise have been.

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- (4) In subsections (1) to (3) references to the debits of the company which is the ultimate debtor in relation to a creditor relationship of the CFC are references to—
- (a) the ultimate debtor's debits in relation to the loan which is the subject of the CFC's creditor relationship, or
  - (b) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), the ultimate debtor's debits in relation to loan B.
- (5) A creditor relationship of the CFC cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the creditor relationship to provide (directly or indirectly) funding for—
- (a) a loan to another person, or
  - (b) so far as not covered by paragraph (a), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (6) Subsection (5) does not apply if—
- (a) the main business of the ultimate debtor is banking business or insurance business, and
  - (b) the funding for the loan or arrangement would be provided in the ordinary course of the ultimate debtor's banking business or insurance business (as the case may be).
- (7) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
- (a) the main business of the ultimate debtor in relation to the creditor relationship is banking business or insurance business, and
  - (b) the creditor relationship is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor to provide (directly or indirectly) funding for a loan or arrangement as mentioned in subsection (5)(a) or (b) in order to obtain a tax advantage for the ultimate debtor.
- (8) A creditor relationship of the CFC cannot be a qualifying loan relationship if the loan which is the subject of the creditor relationship is made to any extent (other than a negligible one) out of funds received by the CFC (directly or indirectly)—
- (a) from a relevant UK connected company other than by way of a loan, or
  - (b) as a result of an arrangement which gives rise to a deduction in the calculation of the profits of a trade of a relevant UK connected company (apart from the ultimate debtor) for the purposes of Part 3 of CTA 2009 (trading income).
- (9) For the purposes of subsection (8) a company is “relevant UK connected” if—
- (a) the company is a UK resident company connected with the CFC,
  - (b) the company's main business is banking business or insurance business, and
  - (c) the company's banking business or insurance business (as the case may be) is a trade.
- [ Subsection (9B) applies to a creditor relationship of a CFC if—
- <sup>F217</sup>(9A) (a) a creditor relationship (“the UK creditor relationship”) of a UK connected company is made where the debtor is a non-UK resident company connected with the UK connected company,
- (b) subsequently, an arrangement (“the relevant arrangement”) is made directly or indirectly in connection with the UK creditor relationship, and

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- (c) the main purpose, or one of the main purposes, of the relevant arrangement is to secure that—
- (i) the relevant UK credits of a UK connected company for a corporation tax accounting period of the company are lower than they would be if the relevant arrangement had not been made, or
  - (ii) the relevant UK debits of a UK connected company for a corporation tax accounting period of the company are greater than they would be if the relevant arrangement had not been made.
- (9B) The CFC's creditor relationship cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, the relevant arrangement.
- (9C) Subsection (9D) applies for the purposes of subsection (9A)(c)(i) and (ii) in determining what the relevant UK credits or debits of a UK connected company for a corporation tax accounting period would be if the relevant arrangement had not been made.
- (9D) Assume that, at all times after the relevant time, the UK creditor relationship remains in place on the same terms as it had at the relevant time.
- (9E) In subsections (9A) to (9D)—
- “corporation tax accounting period” means an accounting period for corporation tax purposes,
  - “the relevant time” means the time immediately before—
    - (a) the time when the relevant arrangement is made, or
    - (b) if earlier, the time when the UK creditor relationship ends,
  - “relevant UK credits”, in relation to a UK connected company, means credits which the company has under Part 5 or 7 of CTA 2009,
  - “relevant UK debits”, in relation to a UK connected company, means debits which the company has under Part 5 or 7 of CTA 2009, and
  - “UK connected company” means a UK resident company which—
    - (a) is connected with the CFC, or
    - (b) was connected with a company with which the CFC is connected.]
- (10) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
- (a) the CFC receives relevant UK funds or other assets for the purpose of funding the loan which is the subject of the CFC's creditor relationship,
  - (b) the provision of the relevant UK funds or other assets is itself funded (wholly or partly and directly or indirectly) by a loan made to a UK connected company by—
    - (i) a non-UK resident person, or
    - (ii) a UK resident person who is not connected with the CFC,
  - (c) the relevant loan is [<sup>F218</sup>used to any extent (other than a negligible one)] to repay wholly or partly another loan made to the ultimate debtor by a person not connected with the ultimate debtor, and
  - (d) the events mentioned in paragraphs (a) to (c) take place under, or are otherwise connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.
- (11) In subsection (10)—
- (a) “relevant UK funds or other assets” and “UK connected company” have the same meaning as in section 371EC, and

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- (b) in paragraph (c) “the relevant loan” means—
  - (i) the loan which is the subject of the CFC's creditor relationship, or
  - (ii) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), loan B.
- (12) In subsections (4)(b) and (11)(b)(ii) references to loan B do not include any part of loan B—
  - (a) which loan A is not made and used to fund, or
  - (b) in relation to which the requirement of section 371IG(3)(c) is not met.

#### **Textual Amendments**

**F217** Ss. 371IH(9A)-(9E) inserted (with effect in accordance with s. 293(2) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 293\(1\)](#)

**F218** Words in s. 371IH(10)(c) substituted (with effect in accordance with s. 294(2) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 294\(1\)](#)

### **371II Power to amend definitions**

The HMRC Commissioners may by regulations amend this Chapter—

- (a) so as to amend the definition of “qualifying resources” for the purposes of section 371IB, or
- (b) so as to amend the definition of “qualifying loan relationship” or “ultimate debtor” for the purposes of this Chapter.

### **371IJ Claims**

- (1) A claim under this Chapter must be made by being included in company C's company tax return for the relevant corporation tax accounting period (as defined in section 371BC(3)).
- (2) The claim may be included in the return originally made or by amendment.
- (3) The claim may be amended or withdrawn by company C only by amending the return.
- (4) A claim under this Chapter may be made, amended or withdrawn at any time up to whichever is the last of the following dates—
  - (a) the first anniversary of the filing date for company C's company tax return for the relevant corporation tax accounting period under paragraph 14 of Schedule 18 to FA 1998;
  - (b) if notice of enquiry is given into that return under paragraph 24 of that Schedule, 30 days after the enquiry is completed [<sup>F219</sup>so far as relating to the matters to which the claim relates];
  - (c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2) of that Schedule, 30 days after notice of the amendment is issued;
  - (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.
- (5) A claim under this Chapter may be made, amended or withdrawn at a later time if an officer of Revenue and Customs allows it.

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- (6) In any event, if after a claim under this Chapter is made there is a change of circumstances affecting the tested income amount or [<sup>F220</sup>the aggregate net tax-interest expense that is mentioned in section 371IE], the claim may be amended at any time within the period of 12 months after the change of circumstances for the purpose of taking account of the change of circumstances.
- (7) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim under this Chapter within the time allowed by or under this section.
- (8) In subsection (4) references to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim under this Chapter.
- (9) An enquiry is so restricted if—
  - (a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998, and
  - (b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim under this Chapter.

#### Textual Amendments

**F219** Words in s. 371IJ(4)(b) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 15 para. 43**

**F220** Words in s. 371IJ(6) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 22(3)**

## CHAPTER 10

### THE EXEMPT PERIOD EXEMPTION

#### 371JA Introduction to Chapter

- (1) This Chapter sets out an exemption called “the exempt period exemption” for the purposes of section 371BA(2)(b).
- (2) Section 371JE also provides for adjustments of profits which would otherwise pass through the CFC charge gateway (see section 371BB(2)(b)) linked to the exempt period exemption.

#### 371JB The basic rule

- (1) The exempt period exemption applies for a CFC's accounting period if—
  - (a) the accounting period ends during an exempt period of the CFC (see sections 371JC and 371JD),
  - (b) the subsequent period condition is met, and
  - (c) the chargeable company condition is met.
- (2) The subsequent period condition is met if—
  - (a) the CFC does not cease to be a CFC before having at least one accounting period which begins after the end of the exempt period, and

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- (b) section 371BC (charging the CFC charge) does not apply in relation to the CFC's first accounting period to begin after the end of the exempt period (see section 371BA(2)).
- (3) The chargeable company condition is met if, at all times during the relevant period—
  - (a) the charging condition in section 371JC is met, and
  - (b) each company which would be a chargeable company for the purposes of that condition is an original chargeable company or is connected with an original chargeable company.
- (4) In subsection (3)—
  - “original chargeable company” means a company which, for the purposes of the charging condition in section 371JC, would be a chargeable company at the beginning of the exempt period, and
  - “the relevant period” means the period which—
    - (a) begins immediately after the beginning of the exempt period, and
    - (b) ends at the end of the CFC's first accounting period to begin after the end of the exempt period.
- (5) This section is subject to section 371JF (anti-avoidance).

### **371JC When does an exempt period begin?**

- (1) An exempt period of a CFC begins at any time (“the relevant time”) during an accounting period of the CFC if—
  - (a) the initial condition is met,
  - (b) the charging condition is met at the relevant time, and
  - (c) at no time during the relevant preceding period (if there is one) is the charging condition met.
- (2) The initial condition is met if—
  - (a) immediately before the relevant time, the company (“C”) which is the CFC is carrying on a business, or
  - (b) if the relevant time is the time at which C is incorporated or formed, C is incorporated or formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies when C begins to control the company or companies.
- (3) To determine if the charging condition is met at any time, assume—
  - (a) that the company which is the CFC is a CFC at the time in question if that is not otherwise the case,
  - (b) that the time in question is itself an accounting period of the CFC, and
  - (c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.
- (4) The charging condition is met at the time in question if, as a result of steps 1, 3 and 4 in section 371BC(1), there would be one or more chargeable companies in relation to the assumed accounting period.

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- (5) “The relevant preceding period” means the period of 12 months ending immediately before the relevant time, excluding any part of that period during which the company which is the CFC does not exist.

### **371JD How long is an exempt period?**

- (1) Subject to what follows, an exempt period of a CFC lasts 12 months.
- (2) Subsection (3) applies if a notice is given to an officer of Revenue and Customs requesting that the length of an exempt period of a CFC be extended (or further extended).
- (3) An officer of Revenue and Customs may extend (or further extend) the length of the exempt period.
- (4) A notice under subsection (2) must be given no later than the end of the exempt period (as it stands at the time the notice is given).
- (5) A notice under subsection (2) may be given only by a company which, at the time the notice is given, would be a chargeable company for the purposes of the charging condition in section 371JC.

### **371JE Adjustment of profits passing through the CFC charge gateway**

- (1) This section applies for a CFC's accounting period if—
  - (a) the accounting period begins, but does not end, during an exempt period of the CFC, and
  - (b) the subsequent period condition and the chargeable company condition in section 371JB are both met.
- (2) The CFC's assumed total profits which would otherwise pass through the CFC charge gateway are to be adjusted to ensure that no profits which arise in the exempt period, as determined on a just and reasonable basis, pass through the CFC charge gateway.
- (3) This section is subject to section 371JF (anti-avoidance).

### **371JF Anti-avoidance**

- (1) The exempt period exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.
- (2) Condition A is that—
  - (a) an arrangement is entered into at any time,
  - (b) the main purpose, or one of the main purposes, of the arrangement is to secure a tax advantage for any person,
  - (c) the arrangement is linked to the exempt period exemption applying or being expected to apply (apart from this section)—
    - (i) for the relevant accounting period, or
    - (ii) for that period and one or more other accounting periods of the CFC,and
  - (d) the arrangement involves one or both of the following—

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- (i) the CFC holding assets which give rise to non-trading finance profits or trading finance profits of the CFC, or
  - (ii) the CFC holding intellectual property which gives rise to any income of the CFC.
- (3) Condition B is that—
- (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the length of any accounting period of the CFC is less than 12 months, and
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the exempt period exemption applies—
    - (i) for the relevant accounting period, or
    - (ii) for that period and one or more other accounting periods of the CFC.
- (4) In this section references to the exempt period exemption include references to section 371JE.

### **371JG Amendment of company tax returns**

- (1) This section applies in relation to a company's company tax return for a corporation tax accounting period if an exempt period of a CFC falls (wholly or partly) in the corporation tax accounting period.
- (2) Any amendment of the return which relates to the application (or non-application) of the exempt period exemption or section 371JE for an accounting period of the CFC may be made by the company at any time no later than 12 months after the relevant filing date.
- (3) “The relevant filing date” means the date which is the filing date under paragraph 14 of Schedule 18 to FA 1998 for the company's company tax return for its corporation tax accounting period in which ends the CFC's first accounting period to begin after the end of the exempt period.
- (4) “Corporation tax accounting period” means an accounting period for corporation tax purposes.

## **CHAPTER 11**

### THE EXCLUDED TERRITORIES EXEMPTION

#### **Modifications etc. (not altering text)**

- C41** Pt. 9A Chs. 11-14 applied (with modifications) by 2009 c. 4, s. 18I-18ID (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

### **371KA Introduction to Chapter**

This Chapter sets out an exemption called “the excluded territories exemption” for the purposes of section 371BA(2)(b).



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### **371KB The basic rule**

- (1) The excluded territories exemption applies for a CFC's accounting period if—
  - (a) the CFC is resident (see section 371KC) in an excluded territory for the accounting period,
  - (b) the total of the following amounts is no more than the threshold amount for the accounting period (see section 371KD)—
    - (i) the CFC's category A income (if any) for the accounting period (see sections 371KE and 371KF),
    - (ii) the CFC's category B income (if any) for the accounting period (see section 371KG),
    - (iii) the CFC's category C income (if any) for the accounting period (see section 371KH), and
    - (iv) the CFC's category D income (if any) for the accounting period (see section 371KI),
  - (c) the IP condition is met (see section 371KJ), and
  - (d) the CFC is not, at any time during the accounting period, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.
- (2) In this Chapter “excluded territory” means a territory specified as such in regulations made by the HMRC Commissioners.
- (3) The HMRC Commissioners may also by regulations, in relation to CFCs resident in a specified excluded territory or to other specified cases, do one or more of the following—
  - (a) provide that one or both of the requirements set out in subsection (1)(b) and (c) does not have to be met in order for the excluded territories exemption to apply;
  - (b) modify one or both of those requirements, including by modifying any provision of this Chapter mentioned in subsection (1)(b) or (c);
  - (c) specify further requirements which must be met in order for the excluded territories exemption to apply.
- (4) If an amount is included in more than one of the categories of income mentioned in subsection (1)(b)(i) to (iv), the amount is to be counted only once in determining if the threshold amount is exceeded.

### **371KC How to determine the territory in which a CFC is resident**

- (1) For the purposes of this Chapter the territory in which a CFC is resident for an accounting period is to be determined in accordance with this section; and in this Chapter “the CFC's territory” means that territory as so determined.
- (2) The CFC is taken to be resident in the territory determined in accordance with section 371TA.
- (3) But section 371TA(1)(b) is to be applied only if, at all times during the accounting period, the CFC or persons with interests in the CFC are liable under the law of the territory in question to tax on the CFC's income.
- (4) If, as a result of subsection (3), no territory of residence can be determined, the excluded territories exemption cannot apply for the accounting period.

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### **371KD What is “the threshold amount”?**

- (1) The threshold amount for a CFC's accounting period is—
  - (a) 10% of the CFC's accounting profits for the accounting period, or
  - (b) if more, £50,000.
- (2) If the accounting period is less than 12 months, the amount specified in subsection (1) (b) is to be reduced proportionately.
- (3) In this Chapter references to a CFC's accounting profits for an accounting period are to be read ignoring section 371VD(7) and (8).

### **371KE Category A income: the basic rule**

- (1) A CFC's category A income for an accounting period consists of any gross amounts (that is, amounts before deduction of expenses or transfers to or from reserves) of any relevant income to which subsection (3), (4) or (5) applies. This is subject to section 371KF.
- (2) “Relevant income” means any income of the CFC which—
  - (a) is brought into account in determining the CFC's accounting profits for the accounting period, or
  - (b) is not so brought into account but arises in the accounting period.
- (3) This subsection applies to any relevant income (apart from any dividend or other distribution of a company) so far as it is exempt from tax in the CFC's territory.
- (4) This subsection applies to any relevant income so far as the tax which falls to be paid in respect of the relevant income in the CFC's territory is at a reduced rate by virtue of a provision having effect under the law of that territory the purpose of which is (wholly or mainly) to encourage (directly or indirectly) investment in that territory.
- (5) This subsection applies to any relevant income if—
  - (a) any tax falls to be paid in respect of the relevant income in the CFC's territory,
  - (b) under the law of that territory, the CFC, any person who has an interest in the CFC or any person connected with the CFC is entitled to any repayment of tax or any payment in respect of a credit for tax, and
  - (c) that repayment or payment—
    - (i) is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a), but
    - (ii) is not a form of relief in respect of losses incurred by the CFC.

### **371KF Category A income: permanent establishments in excluded territories**

- (1) This section applies if—
  - (a) a CFC's category A income for an accounting period would include (apart from this section) the gross amount of any relevant income which arises from the activities of a permanent establishment (“PE”) which the CFC has in a territory outside the CFC's territory, and
  - (b) the territory in which PE is established is an excluded territory.
- (2) The gross amount of that relevant income is to be included in the CFC's category A income only so far as it would also have been included had the references in

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section 371KE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

### **371KG Category B income**

- (1) A CFC's category B income for an accounting period consists of any notional interest which—
  - (a) is deducted from any of the CFC's relevant income for tax purposes under the law of the CFC's territory or any territory in which the CFC has a permanent establishment, but
  - (b) is not deducted in determining the CFC's assumed taxable total profits for the accounting period.
- (2) But the CFC's category B income is not to exceed its relevant non-local income.
- (3) “Notional interest” means an amount representing a notional interest expense or other financing charge calculated by reference to any of the CFC's equity or debt.
- (4) “Relevant income” has the same meaning as in section 371KE.
- (5) “Relevant non-local income” means the gross amount (that is, the amount before deduction of expenses or transfers to or from reserves) of any non-trading income—
  - (a) which is included in the CFC's relevant income, and
  - (b) which is received (directly or indirectly) from—
    - (i) a person resident outside the CFC's territory, or
    - (ii) a permanent establishment which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

### **371KH Category C income**

- A CFC's category C income for an accounting period is the total of the following amounts—
- (a) amounts included in the CFC's accounting profits for the period which fall within section 371VD(4)(a) (whether or not those amounts would have been included in those profits apart from section 371VD(4)(a)), and
  - (b) amounts included in those profits by virtue only of section 371VD(4)(b).

### **371KI Category D income**

- (1) A CFC's category D income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of any income which—
  - (a) is brought into account in determining the CFC's accounting profits for the accounting period, and
  - (b) is to be included in the CFC's category D income in accordance with subsection (3) or (4).
- (2) Subsection (3) applies if—
  - (a) income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,

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- (b) in the CFC's territory, the income is reduced by an amount (“the relevant amount”) for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and
  - (c) there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.
- (3) The relevant amount is to be included in the CFC's category D income.
- (4) Income is to be included in the CFC's category D income so far as the tax which falls to be paid in respect of the income in the CFC's territory is at a reduced rate by virtue of a ruling or other decision or an arrangement made in relation to the CFC by a governmental authority in that territory.

### **371KJ The IP condition**

- (1) This section applies for the purposes of section 371KB(1)(c).
- (2) The IP condition is met unless—
- (a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC (“the exploited IP”),
  - (b) all or parts of the exploited IP were—
    - (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
    - (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  - (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  - (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.
- (3) The significance condition is met if—
- (a) the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
  - (b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.
- (4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—
- (a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
  - (b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.
- (5) “The relevant period” means the period covering the accounting period and the 6 years before the accounting period.

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## CHAPTER 12

### THE LOW PROFITS EXEMPTION

#### 371LA Introduction to Chapter

This Chapter sets out an exemption called “the low profits exemption” for the purposes of section 371BA(2)(b).

#### 371LB The basic rule

- (1) The low profits exemption applies for a CFC's accounting period if subsection (2), (3), (4) or (5) applies.
- (2) This subsection applies if the CFC's accounting profits for the accounting period are no more than £50,000.
- (3) This subsection applies if the CFC's assumed taxable total profits for the accounting period are no more than £50,000.
- (4) This subsection applies if—
  - (a) the CFC's accounting profits for the accounting period are no more than £500,000, and
  - (b) the amount of those profits representing non-trading income is no more than £50,000.
- (5) This subsection applies if—
  - (a) the CFC's assumed taxable total profits for the accounting period are no more than £500,000, and
  - (b) the amount of those profits representing non-trading income is no more than £50,000.
- (6) If the accounting period is less than 12 months, the amounts specified in subsections (2), (3), (4)(a) and (b) and (5)(a) and (b) are to be reduced proportionately.

#### 371LC Anti-avoidance

- (1) The low profits exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.
- (2) Condition A is that—
  - (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the low profits exemption would (apart from this section) apply for the relevant accounting period, and
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—
    - (i) for the relevant accounting period, or
    - (ii) for that period and one or more other accounting periods of the CFC.
- (3) Condition B is that, at any time during the relevant accounting period, the CFC's business is, wholly or mainly, the provision of UK intermediary services.
- (4) For the purposes of subsection (3) the CFC provides “UK intermediary services” if—

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- (a) a UK resident individual (“the service provider”) personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person (“the client”), and
  - (b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the CFC.
- (5) The low profits exemption does not apply for a CFC's accounting period by virtue of section 371LB(2) or (4) if condition C is met.
- (6) Condition C is that, in determining the CFC's assumed taxable total profits for the accounting period, Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

## CHAPTER 13

### THE LOW PROFIT MARGIN EXEMPTION

#### **371MA Introduction to Chapter**

This Chapter sets out an exemption called “the low profit margin exemption” for the purposes of section 371BA(2)(b).

#### **371MB The basic rule**

- (1) The low profit margin exemption applies for a CFC's accounting period if the CFC's accounting profits for the period are no more than 10% of the CFC's relevant operating expenditure.
- (2) In this section references to the CFC's accounting profits are to those profits as determined before any deduction for interest.
- (3) The CFC's “relevant operating expenditure” is its operating expenditure brought into account in determining its accounting profits for the accounting period, excluding—
  - (a) the cost of goods purchased by the CFC, other than goods used by the CFC in the territory in which it is resident for the accounting period, and
  - (b) any expenditure which gives rise, directly or indirectly, to income of a person related to the CFC.

#### **371MC Anti-avoidance**

The low profit margin exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if—

- (a) an arrangement is entered into at any time,
- (b) in consequence of the arrangement, the low profit margin exemption would (apart from this section) apply for the relevant accounting period, and
- (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profit margin exemption applies—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC.

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## CHAPTER 14

### THE TAX EXEMPTION

#### 371NA Introduction to Chapter

This Chapter sets out an exemption called “the tax exemption” for the purposes of section 371BA(2)(b).

#### 371NB The basic rule

- (1) Take the following steps to determine if the tax exemption applies for a CFC's accounting period.

*Step 1* Applying section 371TB, determine the territory (“the CFC's territory”) in which the CFC is resident for the accounting period. If no territory of residence can be determined by applying section 371TB, the tax exemption cannot apply and no further steps are to be taken.

*Step 2* Determine the amount of tax (“the local tax amount”) which is paid in the CFC's territory in respect of the CFC's local chargeable profits arising in the accounting period (applying section 371NC so far as relevant). If the local tax amount is determined under designer rate tax provisions (see section 371ND), the tax exemption cannot apply and step 3 is not to be taken.

*Step 3* In accordance with section 371NE, determine the amount of the corresponding UK tax for the accounting period. The tax exemption applies if the local tax amount is at least 75% of the corresponding UK tax.

- (2) Subsection (3) applies if an amount of tax is paid in the CFC's territory by a person (whether or not the CFC) in respect of any of the CFC's local chargeable profits arising in the accounting period taken together with other amounts.
- (3) For the purposes of step 2 in subsection (1) the amount of tax is to be apportioned between the CFC's local chargeable profits in question and the other amounts on a just and reasonable basis.
- (4) In this Chapter references to the CFC's local chargeable profits are to its profits as determined for tax purposes under the law of the CFC's territory, ignoring any capital gains or losses.

#### 371NC Reductions to “the local tax amount”

- (1) This section applies for the purposes of step 2 in section 371NB(1).
- (2) The local tax amount is to be reduced to what it would have been—
  - (a) had any income, or any income and expenditure (where the income exceeds the expenditure), to which subsection (3) applies not been brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, and
  - (b) had any expenditure to which subsection (4) applies been brought into account in determining those profits.
- (3) This subsection applies to any income, or any income and expenditure, of the CFC—

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- (a) which is brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
  - (b) which does not fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.
- (4) This subsection applies to any expenditure of the CFC—
- (a) which is not brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
  - (b) which does fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.
- (5) Subsection (6) applies if—
- (a) in the CFC's territory any tax falls to be paid in respect of the CFC's local chargeable profits arising in the accounting period,
  - (b) under the law of that territory, any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
  - (c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).
- (6) The local tax amount is to be reduced (or further reduced after any reduction under subsection (2)) by the amount of that repayment or payment.

### **371ND What are “designer rate tax provisions”?**

- (1) For the purposes of step 2 in section 371NB(1) “designer rate tax provisions” means provisions—
- (a) which appear to the HMRC Commissioners to be designed to enable companies to exercise significant control over the amount of tax which they pay, and
  - (b) which are specified in regulations made by the HMRC Commissioners.
- (2) Regulations under subsection (1) may make different provision for different cases or with respect to different territories.

### **371NE How to determine “the corresponding UK tax”**

- (1) For the purposes of step 3 in section 371NB(1) “the corresponding UK tax” is the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.
- (2) In determining that amount of corporation tax—
- (a) ignore any relief from corporation tax attributable to the local tax amount which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and
  - (b) deduct from what would otherwise be that amount of corporation tax—
    - (i) any amount which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and



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- (ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.
- (3) In subsection (2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

## CHAPTER 15

### RELEVANT INTERESTS IN A CFC

#### *Introduction*

#### **3710A Application of Chapter**

This Chapter applies for the purpose of determining the persons who have “relevant interests” in a CFC for the purposes of step 1 in section 371BC(1).

#### **3710B Provision about interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) A person's interest in a company is an “indirect” interest so far as the person has the interest by virtue of having an interest in another company; and references to a “direct” interest in a company are to be read accordingly.
- (3) An interest held by an open-ended investment company within the meaning of Chapter 2 of Part 13 of CTA 2010 (see sections 613 and 615) is treated as held by the company's shareholders in proportion to their shareholdings.
- (4) An interest held by the trustees of an authorised unit trust is treated as held by the persons who have rights under the trust in proportion to their rights.
- (5) An interest held by a bare trustee or nominee (including by virtue of subsection (3) or (4)) is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.
- (6) “Bare trustee” means a person acting as trustee for—
  - (a) a person absolutely entitled as against the trustee,
  - (b) two or more persons who are so entitled,
  - (c) a person who would be so entitled but for being a minor or otherwise lacking legal capacity, or
  - (d) two or more persons who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.
- (7) Subsection (8) applies in a case not covered by subsection (5) if—
  - (a) an interest is held in a fiduciary or representative capacity (including by virtue of subsection (3) or (4)), and
  - (b) there are one or more identifiable beneficiaries.

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- (8) The interest is taken to be held by that beneficiary or, as the case may be, apportioned between those beneficiaries on a just and reasonable basis.

*What is a “relevant interest” in a CFC?*

### **371OC “Relevant interests” of UK resident companies**

- (1) A UK resident company's interest in a CFC is a “relevant interest”, except so far as subsection (2) applies to it.
- (2) This subsection applies to the interest so far as it is an indirect interest which the UK resident company has by virtue of having an interest in another UK resident company.

### **371OD “Relevant interests” of persons related to UK resident companies**

- (1) This section applies if, by virtue of section 371OC, a UK resident company (“UKRC”) has a relevant interest in a CFC.
- (2) A related person's interest in the CFC is a “relevant interest”, except so far as subsection (4) or (5) applies to it.
- (3) “Related person” means a person, other than a UK resident company, who is connected or associated with UKRC.
- (4) This subsection applies to the related person's interest so far as it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person.
- (5) This subsection applies to the interest so far as it is the same as UKRC's relevant interest in the CFC by virtue of UKRC having an interest in the related person.

### **371OE Other “relevant interests”**

- (1) This section applies if a person (“P”) has a direct interest in a CFC which is not a relevant interest by virtue of section 371OC or 371OD.
- (2) P's direct interest is a “relevant interest”, except so far as subsection (3) applies to it.
- (3) This subsection applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC by virtue of the other person having an interest in P.
- (4) In subsection (3) the reference to another person's relevant interest is to another person's relevant interest by virtue of section 371OC or 371OD.

## **CHAPTER 16**

### CREDITABLE TAX OF A CFC

#### **371PA What is “creditable tax”?**

- (1) For the purposes of step 2 in section 371BC(1) a CFC's creditable tax for an accounting period is the total of—

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- (a) the amount of any relief from corporation tax attributable to any foreign tax which, applying the corporation tax assumptions, would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income included or represented in the CFC's chargeable profits for the accounting period,
  - (b) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's chargeable profits for the accounting period by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax),
  - (c) any amount of income tax or corporation tax actually charged in respect of any income included or represented in the CFC's chargeable profits for the accounting period, and
  - (d) any amount of a foreign CFC charge paid in respect of any income included or represented in the CFC's chargeable profits for the accounting period.
- (2) In subsection (1)(a) “foreign tax” means—
- (a) the local tax amount, or
  - (b) any tax under the law of a relevant foreign territory.
- (3) In subsection (1)(b) “relevant income tax” means income tax which the CFC bears by deduction on a payment so far as the payment is included or represented in the CFC's chargeable profits.
- (4) In subsection (1)(d) “foreign CFC charge” means a charge under the law of a relevant foreign territory (by whatever name known) which is similar to the CFC charge.
- (5) In subsection (1)(b) to (d) references to an amount being set off, an amount actually charged or an amount paid do not include so much of any such amount as has been or falls to be repaid to the CFC or any other person whether on the making of a claim or otherwise.
- (6) “Relevant foreign territory” means a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.

## CHAPTER 17

### APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

#### *Introduction*

#### **371QA Application of Chapter**

This Chapter applies for the purpose of apportioning a CFC's chargeable profits and creditable tax for an accounting period among the relevant persons as required by step 3 in section 371BC(1).

#### **371QB Provision about interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) Section 371OB applies as it applies for the purposes of Chapter 15.

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- (3) “Ordinary shares”, in relation to any company, means shares of a single class, however described, which is the only class of share issued by the company.
- (4) For the purposes of subsection (3)—
  - (a) “share” includes a fraction of a share, and
  - (b) shares issued by a company which are paid up to different amounts are not to be taken to be of a single class.
- (5) A person (“P”) holds ordinary shares in the CFC “indirectly” if P directly holds ordinary shares in a company which is share-linked to the CFC.
- (6) A company is “share-linked” to the CFC if it has an interest in the CFC only by virtue of it holding directly—
  - (a) ordinary shares in the CFC, or
  - (b) ordinary shares in another company which is share-linked to the CFC (whether by virtue of paragraph (a) or this paragraph),
 and “share-linked company” means a company which is share-linked to the CFC.

*How are the apportionments to be made?*

### **371QC The basic rules**

- (1) If conditions X to Z are met, the CFC's chargeable profits and creditable tax are to be apportioned among the relevant persons in accordance with section 371QD.
- (2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant person is to be determined on a just and reasonable basis.
- (3) Condition X is that the relevant persons all have their relevant interests by virtue only of their holding, directly or indirectly, ordinary shares in the CFC.
- (4) Condition Y is that each relevant person meets the requirement that the person is either—
  - (a) UK resident at all times during the accounting period, or
  - (b) non-UK resident at all times during the accounting period.
- (5) Condition Z is that no company which has an intermediate interest in the CFC at any time in the accounting period has that interest otherwise than by virtue of holding, directly or indirectly, ordinary shares in the CFC.
- (6) A company (“C”) has an “intermediate interest” in the CFC if—
  - (a) C has an interest in the CFC, and
  - (b) one or more of the relevant persons have relevant interests in the CFC by virtue of having an interest in C.

### **371QD Apportionments to be made in proportion to shareholding**

- (1) If conditions X to Z in section 371QC are met, apply subsections (2) and (3) to each relevant person.
- (2) Determine the percentage (“P%”) of the issued ordinary shares in the CFC represented by the relevant person's relevant interest.

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- (3) P% of the CFC's chargeable profits and P% of the CFC's creditable tax is then apportioned to the relevant person.
- (4) This section is supplemented by sections 371QE and 371QF.

### **371QE Indirect shareholdings**

- (1) This section applies to the relevant interest of a relevant person (“R”) so far as R has that interest by virtue of holding, indirectly, ordinary shares in the CFC (“the relevant shares”).
- (2) The percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it) is given by the following formula—

$$P \times S$$

where—

P is the product of the appropriate fractions of R and each of the share-linked companies through which R indirectly holds the relevant shares, other than the share-linked company which directly holds the relevant shares, and

S is the percentage of the issued ordinary shares in the CFC which the relevant shares represent.

- (3) “The appropriate fraction”, in relation to any person who directly holds ordinary shares in a share-linked company, means that fraction of the issued ordinary shares in the share-linked company which the holding represents.
- (4) If R has different indirect holdings of shares in the CFC (as in the case where different shares are held through different share-linked companies)—
  - (a) apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and
  - (b) then add the separate results together to give the total percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it).

### **371QF Variable shareholdings**

- (1) This section applies if the percentage of the issued ordinary shares in the CFC represented by a relevant person's relevant interest varies during the accounting period.
- (2) That percentage is taken to be the percentage equal to the sum of the relevant percentages for each holding period.
- (3) “Holding period” means a part of the accounting period during which the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest remains the same.
- (4) “Relevant percentage”, in relation to a holding period, means the percentage given by the following formula—

$$P \times H A$$

where—

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P is the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest during the holding period,

H is the number of days in the holding period, and

A is the number of days in the accounting period.

### 371QG Anti-avoidance

- (1) This section applies in relation to an accounting period (“the relevant accounting period”) of a CFC if—
  - (a) at any time an arrangement is entered into, and
  - (b) the main purpose, or one of the main purposes, of the arrangement is to obtain for any person a tax advantage within section 1139(2)(da) of CTA 2010 in relation to—
    - (i) the relevant accounting period, or
    - (ii) that period and one or more other accounting periods of the CFC.
- (2) The CFC's chargeable profits and creditable tax for the relevant accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
- (3) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the effects of the arrangement mentioned in subsection (1)(a) so far as those effects are referable to the purpose mentioned in subsection (1)(b).

## CHAPTER 18

### CONTROL ETC

#### 371RA Overview of Chapter

- (1) Sections 371RB and 371RE set out how to determine for the purposes of this Part if a company is “controlled” by another person or persons.
- (2) [<sup>F221</sup>Sections 371RC and 371RG set] out certain cases in which a non-UK resident company which would not otherwise be a CFC is to be taken to be a CFC for the purposes of this Part.

#### Textual Amendments

**F221** Words in s. 371RA(2) substituted (with effect in accordance with s. 20(5)(6) of the amending Act) by Finance Act 2019 (c. 1), s. 20(3)

#### 371RB Legal and economic control

- (1) A person (“P”) “controls” a company (“C”) if—
  - (a) by means of the holding of shares or the possession of voting power in or in relation to C or any other company, or

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- (b) by virtue of any powers conferred by the articles of association or other document regulating C or any other company,
- P has the power to secure that the affairs of C are conducted in accordance with P's wishes.
- (2) A person (“P”) “controls” a company (“C”) if it is reasonable to suppose that P would—
- (a) if the whole of C's share capital were disposed of, receive (directly or indirectly and whether at the time of the disposal or later) over 50% of the proceeds of the disposal,
  - (b) if the whole of C's income were distributed, receive (directly or indirectly and whether at the time of the distribution or later) over 50% of the distributed amount, or
  - (c) in the event of the winding-up of C or in any other circumstances, receive (directly or indirectly and whether at the time of the winding-up or other circumstances or later) over 50% of C's assets which would then be available for distribution.
- (3) For the purposes of subsection (2) any rights which P has as a relevant bank are to be ignored.
- (4) In subsection (2)—
- (a) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,
  - (b) in determining for the purposes of paragraph (b) the percentage of the distributed amount which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of the distributed amount at the time of the distribution, and
  - (c) in determining for the purposes of paragraph (c) the percentage of C's assets which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of C's assets at the time of the winding-up or other circumstances.
- (5) “Relevant bank” means a person (“RB”) who—
- (a) carries on banking business which is regulated in the territory in which RB is resident, and
  - (b) is acting, in the ordinary course of that business, in relation to money lent to C by RB in the ordinary course of that business.
- (6) In subsections (2) and (4) references to P receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for P's benefit.
- (7) If two or more persons, taken together, meet the requirement of subsection (1) or (2) for controlling a company, those persons are taken to control the company.

**Modifications etc. (not altering text)**

**C42** S. 371RB applied by 2009 c. 4, s. 931E(4)(6) (as substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 31](#) (with [Sch. 20 para. 53](#)))

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### **371RC Legal and economic control: the 40% rule**

- (1) This section applies to a non-UK resident company (“C”) if—
  - (a) in accordance with section 371RB(7), two persons (“the controllers”) control C, and
  - (b) one of the controllers is UK resident and the other is non-UK resident.
- (2) If conditions X and Y are met, C is to be taken to be a CFC (if C would not otherwise be).
- (3) Condition X is that the UK resident controller has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.
- (4) Condition Y is that the non-UK resident controller has interests, rights and powers representing—
  - (a) at least 40%, but
  - (b) no more than 55%,of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

### **371RD Legal and economic control: supplementary provision**

- (1) Subsection (2) applies for the purpose of—
  - (a) determining, in accordance with section 371RB, if a person, or two or more persons, control a company, or
  - (b) determining if condition X or Y in section 371RC is met in relation to two persons who control a company.
- (2) There is to be attributed to each person all the rights and powers mentioned in subsection (3) (so far as they would not otherwise be attributed to the person).
- (3) The rights and powers referred to in subsection (2) are—
  - (a) rights and powers which the person (“P”) is entitled to acquire at a future date or which P will, at a future date, become entitled to acquire,
  - (b) rights and powers of other persons so far as they fall within subsection (4),
  - (c) if P is UK resident, rights and powers of any UK resident person who is connected with P, and
  - (d) if P is UK resident, rights and powers which would, in accordance with subsection (2), be attributed to a UK resident person (“Q”) who is connected with P if Q were P (including rights and powers which would be attributed to Q by virtue of this paragraph).
- (4) Rights and powers fall within this subsection so far as they—
  - (a) are required, or may be required, to be exercised in one or more of the following ways—
    - (i) on behalf of P,
    - (ii) under the direction of P, or
    - (iii) for the benefit of P, and
  - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.



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- (5) In subsections (3)(b) to (d) and (4) references to a person's rights and powers include references to any rights or powers which the person—
  - (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (6) In determining for the purposes of this section whether one person is connected with another, section 1122(4) of CTA 2010 (as applied by section 371VF(2)(b)) is to be ignored.
- (7) In this section and sections 371RB and 371RC references to—
  - (a) rights and powers of a person, or
  - (b) rights and powers which a person is or will become entitled to acquire,include references to rights and powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

**Modifications etc. (not altering text)**

**C43** S. 371RD applied by 2009 c. 4, s. 931E(5)(6) (as substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 31](#) (with [Sch. 20 para. 53](#)))

**371RE Control determined by reference to accounting standards**

- (1) A person (“P”) “controls” a company (“C”) at any time when P is C's parent <sup>F222</sup>....
- (2) But C is not to be taken to be a CFC by virtue of subsection (1) at the time in question unless the 50% condition is met at that time.
- (3) To determine if the 50% condition is met at the time in question, assume—
  - (a) that C is a CFC at that time,
  - (b) that that time is itself an accounting period of the CFC, and
  - (c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.
- (4) The 50% condition is met at the time in question if, as a result of steps 1 and 3 in section 371BC(1), at least 50% of the CFC's chargeable profits would be apportioned to P taken together with its UK resident [<sup>F223</sup>subsidiaries] (if any).
- (5) [<sup>F224</sup>“Parent”] and [<sup>F225</sup>“subsidiary”] are to be read in accordance with [<sup>F226</sup>Financial Reporting Standard 102 issued in March 2013 by the Financial Reporting Council] , as from time to time modified, amended or revised.
- (6) For the purposes of this section it does not matter if P does not prepare, or is not required to prepare, consolidated financial statements in accordance with [<sup>F227</sup>Financial Reporting Standard 102] (but see section 371RF(3)).

**Textual Amendments**

**F222** Word in s. 371RE(1) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment to Section 371RE\) \(Controlled Foreign Companies\) Regulations 2014 \(S.I. 2014/3237\)](#), regs. 1(2), **2(a)**

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- F223** Word in s. 371RE(4) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment to Section 371RE\) \(Controlled Foreign Companies\) Regulations 2014 \(S.I. 2014/3237\)](#), regs. 1(2), **2(b)**
- F224** Word in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment to Section 371RE\) \(Controlled Foreign Companies\) Regulations 2014 \(S.I. 2014/3237\)](#), regs. 1(2), **2(c)(i)**
- F225** Word in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment to Section 371RE\) \(Controlled Foreign Companies\) Regulations 2014 \(S.I. 2014/3237\)](#), regs. 1(2), **2(c)(ii)**
- F226** Words in s. 371RE(5) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment to Section 371RE\) \(Controlled Foreign Companies\) Regulations 2014 \(S.I. 2014/3237\)](#), regs. 1(2), **2(c)(iii)**
- F227** Words in s. 371RE(6) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation \(International and Other Provisions\) Act 2010 \(Amendment to Section 371RE\) \(Controlled Foreign Companies\) Regulations 2014 \(S.I. 2014/3237\)](#), regs. 1(2), **2(d)**

### **371RF Power to amend section 371RE etc**

- (1) The Treasury may by regulations amend section 371RE as they consider appropriate to take account of—
- (a) any modification, amendment or revision of Financial Reporting Standard 2, or
  - (b) any relevant document.
- (2) “Relevant document” means—
- (a) a document which replaces Financial Reporting Standard 2, or
  - (b) a document which replaces, modifies, amends or revises a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.
- (3) The Treasury may by regulations make provision corresponding to section 371RE—
- (a) which operates by reference to any other accounting standard dealing with consolidated financial statements, and
  - (b) which is to apply, instead of section 371RE, to determine if a person “controls” a company where that person prepares, or is required to prepare, consolidated financial statements in accordance with that standard.
- (4) The Treasury may by regulations provide that, if specified conditions are met, a company is not to be taken to be a CFC by virtue of—
- (a) section 371RE, or
  - (b) provision corresponding to section 371RE contained in regulations under subsection (3).
- (5) In subsections (3) and (4) references to section 371RE are to that section as amended from time to time by regulations under subsection (1).

### **[<sup>F228</sup>371RC] Companies in which a UK resident company has more than a 50% investment**

- (1) If a UK resident company (whether alone or together with any associated enterprises) directly or indirectly has more than a 50% investment in a non-UK resident company, the non-UK resident company is to be taken to be a CFC (if it would not otherwise be).

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- (2) A person (“P”) is an “associated enterprise” in relation to a UK resident company if—
- (a) P directly or indirectly has a 25% investment in the company (or vice versa), or
  - (b) another person directly or indirectly has a 25% investment in each of P and the company.
- (3) Section 259ND (meaning of “50% investment” and “25% investment”) applies for the purposes of determining for the purposes of this section—
- (a) whether a person has “more than a 50% investment” in another person, and
  - (b) whether a person has a “25% investment” in another person,
- and, accordingly, references in section 259ND to “X%” are to be read as references to more than 50% or to 25% (as appropriate) and references in that section to “X% or more” are to be read as references to more than 50% or to 25% or more (as appropriate).]

#### Textual Amendments

**F228** S. 371RG inserted (with effect in accordance with s. 20(5)(6) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 20\(4\)](#)

## CHAPTER 19

### ASSUMED TAXABLE TOTAL PROFITS, ASSUMED TOTAL PROFITS AND THE CORPORATION TAX ASSUMPTIONS

#### Overview

#### 371SA Overview of Chapter

This Chapter explains the concepts of “assumed taxable total profits” and “assumed total profits” (see section 371SB) and “the corporation tax assumptions” (see section 371SC) which are referred to in this Part.

*“Assumed taxable total profits” and “assumed total profits”*

#### 371SB What are “assumed taxable total profits” and “assumed total profits”?

- (1) For the purposes of this Part a CFC’s “assumed taxable total profits” for an accounting period are what, applying the corporation tax assumptions, would be the CFC’s taxable total profits of the accounting period for corporation tax purposes.
- (2) “Taxable total profits” has the meaning given by section 4(2) of CTA 2010 (calculation of taxable total profits).
- (3) But, for this purpose, in section 4(3) of CTA 2010—
  - (a) step 1 is to be applied subject to subsections (4) to (6) below, and
  - (b) step 2 is to be ignored.

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- (4) Any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary is to be added to the income determined at step 1.
- (5) If there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
- (6) If by virtue of subsection (4) any income (“the settlement income”) is added to the income determined at step 1, any dividend or other distribution which derives from the settlement income is to be excluded from the income determined at step 1.
- (7) Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in—
  - (a) the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
  - (b) the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.
- (8) If the CFC charge is charged in relation to the beneficiary's accounting period, the income is not to be included in the settlor's chargeable profits.
- (9) For the purposes of this Part a CFC's “assumed total profits” for an accounting period are its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

*“The corporation tax assumptions”*

### **371SC What are “the corporation tax assumptions”?**

- (1) In this Part “the corporation tax assumptions” means the assumptions set out in sections 371SD to 371SR.
- (2) The corporation tax assumptions are to be applied in determining the following for an accounting period (“the relevant accounting period”) of a CFC—
  - (a) the CFC's assumed taxable total profits in accordance with section 371SB(1),
  - (b) the corresponding UK tax in accordance with section 371NE, and
  - (c) the CFC's creditable tax in accordance with Chapter 16.

### **371SD UK residence etc**

- (1) Assume—
  - (a) that the CFC is UK resident at all times during the relevant accounting period,
  - (b) if the relevant accounting period is not the CFC's first accounting period, that the CFC has been UK resident from the beginning of the CFC's first accounting period, and
  - (c) except where the CFC ceases to be a CFC at the end of the relevant accounting period, that the CFC will continue to be UK resident until it ceases to be a CFC,

and that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods (as determined in accordance with section 371VB) are accounting periods for corporation tax purposes, accordingly.

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- (2) Subsection (1)—
- (a) does not require it to be assumed that there is any change in the place or places at which the CFC carries on its activities, and
  - (b) requires (in particular) that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (exemption for profits from securities free of tax to residents abroad).
- (3) If the CFC is (actually) UK resident immediately before the beginning of its first accounting period, assume that its UK residence from the beginning of that accounting period (as assumed in accordance with subsection (1)) is not continuous with its (actual) UK residence before the beginning of that accounting period.
- (4) Except where the relevant accounting period is the CFC's first accounting period, assume that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period.
- (5) Subsection (4) applies (in particular) for the purpose of applying any relief which is relevant to two or more accounting periods.
- (6) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

### **371SE Close company**

Assume that the CFC is not a close company.

### **371SF Claims and elections**

- (1) In relation to any relief under the Corporation Tax Acts which is dependent upon the making of a claim or election, assume the CFC—
- (a) to have made that claim or election which would give the maximum amount of relief, and
  - (b) to have made that claim or election within any applicable time limit.
- (2) Subsection (1) does not cover (so far as it would otherwise do so) a claim or election under—
- (a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
  - (b) section 1275 of CTA 2009 (relief for unremittable income),
  - (c) section 9A of CTA 2010 (designated currency of a UK resident investment company), or
  - (d) regulations made under paragraph 16 of Schedule 8 to FA 2006 (election for lease to be treated as long funding lease).
- (3) Subsection (1) is also subject to section 371SK(5).

### **371SG Disapplication of assumption in section 371SF(1)**

- (1) This section applies if a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed—

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- (a) not to have made for the relevant accounting period a specified claim or election otherwise covered by section 371SF(1),
  - (b) to have made for the relevant accounting period a specified claim or election, being different from one assumed by section 371SF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or
  - (c) to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement (as the case may be).
- (2) In determining for the purposes of section 371BA(3) the CFC's assumed total profits and the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010—
- (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  - (b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.
- (3) In determining the CFC's creditable tax—
- (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  - (b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.
- (4) The claims which may be specified in a notice under subsection (1) by virtue of paragraph (b) include claims under the provision mentioned in section 371SF(2)(b) or 371SK(5).
- (5) A notice under subsection (1)—
- (a) may be given only by a company or companies determined under subsection (6) or (7), and
  - (b) must be given—
    - (i) within 20 months after the end of the relevant accounting period, or
    - (ii) within such longer period as an officer of Revenue and Customs may allow.
- (6) A company may give a notice if—
- (a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (7) Two or more companies may together give a notice if—
- (a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

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- (8) In subsections (6) and (7) “X%” means the total percentage of the CFC’s chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

### **371SH Elections under section 9A of CTA 2010**

- (1) This section applies if—
- (a) during the relevant accounting period or any earlier accounting period of the CFC, a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made an election under section 9A of CTA 2010 (designated currency of a UK resident investment company) in the form specified in the notice, and
  - (b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make an election under that section in the form specified in the notice (see, in particular, section 9A(2)).
- (2) Assume—
- (a) that an election under section 9A of CTA 2010 has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and
  - (b) that, accordingly, sections 9A and 9B of that Act apply to determine the effect (if any) of that election.
- (3) Subsection (2)(b) does not apply if—
- (a) a notice is given to an officer of Revenue and Customs revoking the notice under subsection (1), and
  - (b) the time at which the notice revoking the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to revoke its assumed election under section 9A of CTA 2010.
- (4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).
- (5) A company may give a notice if—
- (a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC’s chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (6) Two or more companies may together give a notice if—
- (a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC’s chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.

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(7) In subsections (5) and (6) (and this subsection)—

“the applicable accounting period” means the accounting period of the CFC during which the notice under subsection (1) or (3) (as the case may be) is given, and

“X%” means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

### **371SI Modification of sections 6 and 7 of CTA 2010**

(1) This section applies if—

- (a) in accordance with section 371SH, the CFC is assumed to have made an election under section 9A of CTA 2010, but
- (b) applying the corporation tax assumptions apart from this section, section 6 or 7 of CTA 2010 could not apply in relation to the CFC for a period of account because the CFC does not prepare its accounts in accordance with generally accepted accounting practice.

(2) If sterling is the CFC's designated currency for the period of account, assume that section 6 of CTA 2010 applies in relation to the CFC as if the words “in accordance with generally accepted accounting practice” were—

- (a) omitted from subsection (1A)(a), and
- (b) in subsection (2), inserted after “its accounts in sterling”.

(3) If the CFC's designated currency for the period of account is a currency other than sterling, assume that section 7 of CTA 2010 applies in relation to the CFC as if the words “in accordance with generally accepted accounting practice” were—

- (a) omitted from subsection (1A)(a), and
- (b) at step 1 in subsection (2), inserted after “that currency”.

### **371SJ Elections for leases to be treated as long funding leases**

(1) This section applies if—

- (a) a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made a long funding lease election in the form specified in the notice, and
- (b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make a long funding lease election in the form specified in the notice.

(2) Assume—

- (a) that a long funding lease election has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and
- (b) that, accordingly, regulation 2(5) of the 2007 Regulations applies to determine the effect (if any) of that election.

(3) Subsection (2)(b) does not apply if—

- (a) a notice is given to an officer of Revenue and Customs withdrawing the notice under subsection (1), and



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- (b) the time at which the notice withdrawing the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to withdraw its assumed long funding lease election.
- (4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).
- (5) A company may give a notice if—
- (a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (6) Two or more companies may together give a notice if—
- (a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (7) In this section—
- (a) “the 2007 Regulations” means the Long Funding Leases (Elections) Regulations 2007 (S.I. 2007/304),
  - (b) terms defined in the 2007 Regulations have the same meaning as they have in the 2007 Regulations,
  - (c) “the applicable accounting period” means the CFC's accounting period in which falls the effective date specified in the notice under subsection (1), and
  - (d) “X%” means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.
- (8) The Treasury may by regulations amend this section as they consider appropriate to take account of any regulations made by them from time to time under paragraph 16 of Schedule 8 to FA 2006 (elections for leases to be treated as long funding leases).

### **371SK Intangible fixed assets**

- (1) This section applies for the purpose of applying Part 8 of CTA 2009 (intangible fixed assets).
- (2) Assume that any intangible fixed asset acquired or created by the CFC before its first accounting period was acquired or created by the CFC at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
- (3) In subsection (2) references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

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- (4) The assumption in subsection (2) does not affect the determination of the question whether Part 8 of CTA 2009 applies to an asset in accordance with section 882 of that Act (application of Part 8 to assets created or acquired on or after 1 April 2002).
- (5) Assume also that the CFC—
  - (a) has not claimed any relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of reinvestment), or
  - (b) made any provisional declaration of entitlement to such relief.
- (6) Subsection (5) is subject to section 371SG(4).

### **Restrictions on certain deductions: deductions allowances**

**F229 371SKA**

- (1) This section applies for the purposes of—
  - (a) applying Part 7ZA of CTA 2010 (restrictions on obtaining certain deductions), and
  - (b) applying any provision of Part 7ZA of CTA 2010 for the purposes of Part 7A of that Act (restrictions on obtaining certain deductions: banking companies).
- (2) Assume that each of the following is nil—
  - (a) the CFC's deductions allowance for the relevant accounting period,
  - (b) the CFC's trading profits deductions allowance for the relevant accounting period, and
  - (c) the CFC's non-trading profits deductions allowance for the relevant accounting period.
- (3) But if section 269ZX of CTA 2010 (increase of deductions allowance where provision for onerous lease reversed) applies in relation to the relevant accounting period, the reference in subsection (2) to “nil” is to be read as a reference to an amount equal to the increase provided for by subsection (3) of that section.]

#### **Textual Amendments**

**F229** S. 371SKA inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 180](#)

### **371SL Group relief etc**

- (1) Assume that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.
- (2) Subsection (3) applies if—
  - (a) under Part 5 of CTA 2010 (group relief) [<sup>F230</sup>or Part 5A of that Act (group relief for carried-forward losses)] the CFC actually surrenders any relief which is allowed to another company by way of group relief [<sup>F231</sup>or group relief for carried-forward losses], but
  - (b) applying the corporation tax assumptions apart from subsection (3), the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period.

*Status: Point in time view as at 12/02/2019.*

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- (3) Assume that the relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period.

[ This section is subject to section 371SLA (corporate interest restriction).]

F232(4)

#### Textual Amendments

**F230** Words in s. 371SL(2)(a) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 181(a)**

**F231** Words in s. 371SL(2)(a) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 181(b)**

**F232** S. 371SL(4) inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 23(2)**

### **Corporate interest restriction**

#### **371SLA**

- (1) This section applies for the purpose of applying Part 10 (corporate interest restriction).

- (2) Assume—

- (a) that the CFC is a member of a worldwide group for a period of account of which it would be a member if section 371SL were ignored, and
- (b) that the CFC is the only UK group company in the period (within the meaning of that Part).

- (3) Assume also that Part 10 applies as if subsections (2) and (3) of section 392 (interest capacity of the group: the de minimis amount) were omitted.]

#### Textual Amendments

**F233** S. 371SLA inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 23(3)**

### **371SM Capital allowances**

- (1) This section applies if, before the CFC's first accounting period, the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade.
- (2) For the purposes of Part 2 of CAA 2001 (plant and machinery allowances) assume that the plant or machinery—
  - (a) was provided for purposes wholly other than those of the trade, and
  - (b) was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period,
 and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly.
- (3) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.
- (4) This section is to be read as if it were contained in Part 2 of CAA 2001.

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### **371SN Unremittable overseas income**

- (1) For the purposes of Part 18 of CTA 2009 (unremittable overseas income) assume that in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.
- (2) “The relevant territories” means—
  - (a) the United Kingdom,
  - (b) the territory in which the CFC is taken to be resident for the relevant accounting period as determined under Chapter 20, and
  - (c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

### **371SO Tax advantages**

- (1) This section applies if there is an arrangement or other conduct a purpose of which is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 by obtaining by any means what would, applying the corporation tax assumptions apart from this section, be a tax advantage within section 1139(2)(a) to (d) of that Act.
- (2) So far as they would not otherwise do so, the Corporation Tax Acts are to be assumed to apply in relation to the arrangement or other conduct in the same way as they would apply were the purpose of obtaining a tax advantage within section 1139(2)(da) of CTA 2010 the purpose of obtaining an actual tax advantage within section 1139(2)(a) to (d) of that Act by the means in question.

### **371SP Disguised interest: application of Chapter 2A of Part 6 of CTA 2009**

- (1) This section applies if—
  - (a) applying the corporation tax assumptions apart from this section, Chapter 2A of Part 6 of CTA 2009 (disguised interest) would, but for section 486D(1) of that Act, apply in relation to a return produced for the CFC by an arrangement to which the CFC is a party, and
  - (b) it is reasonable to assume that the main purpose, or one of the main purposes, of the CFC being a party to the arrangement is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.
- (2) Chapter 2A of Part 6 of CTA 2009 is to be assumed to apply in relation to the return.
- (3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 486D(4) of CTA 2009.
- (4) This section is without prejudice to the generality of section 371SO.

### **371SQ Shares accounted for as liabilities: application of section 521C of CTA 2009**

- (1) This section applies if—
  - (a) applying the corporation tax assumptions apart from this section, section 521C of CTA 2009 (shares accounted for as liabilities) would, but for section 521C(1)(f) of that Act, apply to a share held by the CFC, and

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- (b) the main purpose, or one of the main purposes, for which the CFC holds the share is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.
- (2) Section 521C of CTA 2009 is to be assumed to apply to the share.
- (3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 521E(4) of CTA 2009.
- (4) This section is without prejudice to the generality of section 371SO.

### **371SR Double taxation relief: [<sup>F234</sup>countering effect of avoidance arrangements]**

- (1) This section applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 (double taxation relief: conditions to be met for [<sup>F235</sup>countering effect of avoidance arrangements]) would or might be met in relation to the CFC in relation to the relevant accounting period.
- (2) Assume that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period that would be referable to the purpose referred to in condition B of section 82.

#### **Textual Amendments**

**F234** Words in s. 371SR heading substituted (with effect in accordance with s. 31(6) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 31\(5\)\(b\)](#)

**F235** Words in s. 371SR(1) substituted (with effect in accordance with s. 31(6) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 31\(5\)\(a\)](#)

## **CHAPTER 20**

### **RESIDENCE OF CFCs**

#### **371TA The basic rule**

- (1) For the purposes of this Part a CFC is taken to be resident for an accounting period (“the relevant accounting period”) in—
  - (a) the territory determined by applying section 371TB, or
  - (b) if no territory can be determined by applying that section—
    - (i) if subsection (2) applies, the territory in which the CFC is taken to be resident under the double taxation arrangements in question, or
    - (ii) otherwise, the territory in which the CFC is incorporated or formed.
- (2) This subsection applies if the CFC is incorporated or formed in the United Kingdom but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).
- (3) This section is subject to section 371KC and step 1 in section 371NB(1).

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### **371TB How to determine the territory in which the CFC is resident**

- (1) The CFC is taken to be resident in the territory under the law of which, at all times during the relevant accounting period, the CFC is liable to tax by reason of domicile, residence or place of management.
- (2) If there are two or more territories (each of which is called an “eligible territory”) falling within subsection (1), the CFC is taken to be resident in only one of the eligible territories.
- (3) To determine that territory, go through the following subsections.  
If two or more subsections apply, the earlier or earliest subsection takes precedence.
- (4) If an election or designation under subsection (8) or (9) has effect for the relevant accounting period by virtue of section 371TC(9)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.
- (5) If, at all times during the relevant accounting period, the CFC's place of effective management is situated in one of the eligible territories only, the CFC is taken to be resident in that territory.
- (6) If—
  - (a) at all times during the relevant accounting period, the CFC's place of effective management is situated in two or more of the eligible territories, and
  - (b) immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of those eligible territories,
 the CFC is taken to be resident in the territory in which over 50% of the amount of the CFC's assets is situated.  
  
For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.
- (7) If, immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of the eligible territories, the CFC is taken to be resident in that territory.  
  
For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.
- (8) If, in accordance with section 371TC(1), an election specifying an eligible territory is made, the CFC is taken to be resident in that territory.
- (9) If an officer of Revenue and Customs designates an eligible territory on a just and reasonable basis (see section 371TC(6) to (8)), the CFC is taken to be resident in that territory.

### **371TC Elections and designations about residence**

- (1) An election under section 371TB(8)—
  - (a) may be made only by a company or companies determined under subsection (2) or (3),
  - (b) must be made by notice to an officer of Revenue and Customs,
  - (c) must be made no later than 12 months after the end of the relevant accounting period,

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- (d) must state, in relation to each company making the election, the percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period,
  - (e) must be signed on behalf of each company making the election, and
  - (f) is irrevocable.
- (2) A company may make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the company would be a chargeable company whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would represent more than half of X%.
- (3) Two or more companies may together make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the companies would all be chargeable companies whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would, taken together, represent more than half of X%.
- (4) In subsections (2) and (3) “X%” means the total percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.
- (5) In subsections (2) to (4) references to apportioned percentages of the CFC's chargeable profits for the relevant accounting period are to the percentages apportioned at step 3 in section 371BC(1).
- (6) A designation under section 371TB(9) is irrevocable.
- (7) An officer of Revenue and Customs must give notice of a designation to each company which the officer considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.
- (8) The notice must specify—
  - (a) the date on which the designation was made,
  - (b) the CFC's name,
  - (c) the relevant accounting period, and
  - (d) the territory designated.
- (9) An election or designation has effect in relation to—
  - (a) the relevant accounting period, and
  - (b) each successive accounting period of the CFC until subsection (10) applies to an accounting period,regardless of any change in the persons who have interests in the CFC or any change in those interests.
- (10) This subsection applies to an accounting period (“the later period”) if—
  - (a) one or more of the territories which were eligible territories in relation to the relevant accounting period does not fall within section 371TB(1) in relation to the later period, or
  - (b) some other territory also falls within section 371TB(1) in relation to the later period.

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## CHAPTER 21

### MANAGEMENT

#### 371UA Introduction to Chapter

- (1) The HMRC Commissioners are responsible for the management of the CFC charge, including the collection of sums charged.
- (2) In this Chapter—
  - “closure notice” means a notice under paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry and statement of conclusions),
  - “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule), and
  - “the Taxes Acts” has the same meaning as in TMA 1970.

#### 371UB Application of the Taxes Acts to the CFC charge

- (1) The provision of step 5 in section 371BC(1) relating to the charging of a sum as if it were an amount of corporation tax is to be taken as applying all enactments applying generally to corporation tax.
- (2) This is subject to—
  - (a) the provisions of the Taxes Acts, and
  - (b) any necessary modifications.
- (3) The enactments referred to in subsection (1) include—
  - (a) those relating to returns of information and the supply of accounts, statements and reports,
  - (b) those relating to the assessing, collecting and receiving of corporation tax,
  - (c) those conferring or regulating a right of appeal, and
  - (d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
- (4) In particular, TMA 1970 is to have effect as if—
  - (a) any reference to corporation tax included a reference to a sum charged at step 5 in section 371BC(1) as if it were an amount of corporation tax, and
  - (b) any reference to profits of a company included, in the case of a chargeable company in relation to a CFC's accounting period, references to the percentage of the CFC's chargeable profits in respect of which the company is charged at step 5 in section 371BC(1).
- (5) Nothing in—
  - (a) paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns), or
  - (b) Schedule 1A to TMA 1970 (claims or elections not included in returns),
 applies to an election under section 371TB(8).



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[<sup>F236</sup> **371UBA** Amendments in respect of a charge on a banking company: information to be provided

- (1) This section applies if—
  - (a) a sum is charged on a chargeable company at step 5 in section 371BC(1),
  - (b) the chargeable company is a banking company (within the meaning of Chapter 4 of Part 7A of CTA 2010) for the relevant corporation tax accounting period, and
  - (c) a payment is made (whether or not by the chargeable company) that is wholly or partly in respect of the sum charged on the chargeable company as mentioned in paragraph (a).
- (2) The responsible company must notify an officer of Revenue and Customs in writing, on or before the date the payment is made, of the amount of the payment that is in respect of the sum charged on the chargeable company as mentioned in subsection (1) (a).
- (3) “The responsible company” is—
  - (a) if the chargeable company is party to relevant group payment arrangements, the company that is, under those arrangements, to discharge the liability of the chargeable company to pay corporation tax for the relevant corporation tax accounting period, and
  - (b) otherwise, the chargeable company.
- (4) “Relevant group payment arrangements” means arrangements under section 59F(1) of TMA 1970 (arrangements for paying of tax on behalf of group members) that relate to the relevant corporation tax accounting period.
- (5) The requirement in subsection (2) is to be treated, for the purposes of Part 7 of Schedule 36 to FA 2008 (information and inspection powers: penalties), as a requirement in an information notice.
- (6) This section is subject to any provision to the contrary in regulations under section 59E of TMA 1970 (further provision as to when corporation tax is due and payable).
- (7) In this section “relevant corporation tax accounting period” has the meaning given by section 371BC(3).]

**Textual Amendments**

**F236** S. 371UBA inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 3 para. 10](#)

**371UC Just and reasonable apportionments**

- (1) This section applies if—
  - (a) an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with section 371QC(2), and
  - (b) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return.

*Status: Point in time view as at 12/02/2019.*

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- (2) An officer of Revenue and Customs may determine that another basis is to be used for the apportionment; and matters are then to proceed as if that were the only basis allowed by the Taxes Acts.
- (3) The officer's determination may be questioned on an appeal against an amendment of the company's tax return made under paragraph 30 or 34 of Schedule 18 to FA 1998.
- (4) But it may be questioned only on the ground that the basis of apportionment determined by the officer is not just and reasonable.

### <sup>F237</sup>**371UD** Relief against sum charged

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#### **Textual Amendments**

**F237** S. 371UD omitted (with effect in accordance with s. 36(3)-(5) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), s. 36(1)

### **371UE Appeals affecting more than one person**

- (1) This section applies if—
  - (a) a relevant appeal involves any question concerning the application of this Part in relation to a particular person, and
  - (b) the resolution of that question is likely to affect the liability under this Part of any other person in relation to the CFC concerned.
- (2) Each of the following is a “relevant appeal”—
  - (a) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company tax return, and
  - (b) an appeal under paragraph 48 of that Schedule against a discovery assessment.
- (3) The appeal is to be conducted as follows.
- (4) Each of the persons whose liability under this Part is likely to be affected by the resolution of the question is entitled to be a party to the proceedings.
- (5) The tribunal must determine the question separately from any other questions in the proceedings.
- (6) The tribunal's determination on the question is to have effect as if made in an appeal to which each of those persons was a party.

### **371UF Recovery of sum charged from other UK resident companies**

- (1) This section applies if a sum charged on a company (“the defaulting company”) at step 5 in section 371BC(1) as if it were an amount of corporation tax is not fully paid before the date on which it is due and payable in accordance with the Taxes Acts.
- (2) An officer of Revenue and Customs may give a notice of liability to another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.

*Status: Point in time view as at 12/02/2019.*

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- (3) If such a notice is given to a company (“the responsible company”), the following are payable by the responsible company—
- (a) the whole or, as the case may be, the corresponding part of the sum charged so far as it is unpaid as at the time the notice is given,
  - (b) the whole or, as the case may be, the corresponding part of any unpaid interest due on the sum charged as at the time the notice is given, and
  - (c) any interest accruing on the sum charged after the notice is given so far as referable to the sum payable by the responsible company under paragraph (a).
- (4) Subsection (5) applies if any sum payable by the responsible company under subsection (3) is not fully paid by the end of the period of 3 months starting with the date on which the notice is given.
- (5) Without affecting the right of recovery from the responsible company, the outstanding amount may be recovered from the defaulting company.

## CHAPTER 22

### SUPPLEMENTARY PROVISION

#### 371VA Definitions

In this Part—

“accounting period”, in relation to a CFC, is to be read in accordance with section 371VB,

“accounting profits”, in relation to a CFC, is to be read in accordance with sections 371VC and 371VD,

“arrangement” includes—

- (a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and
- (b) a series of arrangements or a part of an arrangement,

“assumed taxable total profits”, in relation to a CFC, is to be read in accordance with section 371SB(1) to (6),

“assumed total profits”, in relation to a CFC, is to be read in accordance with section 371SB(9), subject to section 371DA(2),

“banking business” means the business of—

- (a) banking, deposit-taking, money-lending or debt-factoring, or
- (b) any activity similar to an activity falling within paragraph (a),

“CFC” is to be read in accordance with section 371AA(3), subject to sections 371RC and 371RE(2) and regulations under section 371RF(4),

“the CFC charge” is to be read in accordance with section 371AA(1),

“chargeable company”, in relation to a CFC's accounting period, means a company which is a chargeable company for the purposes of step 4 in section 371BC(1),

“chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3),

“company” is to be read subject to section 371VE,

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“company tax return” means a return required to be made under Schedule 18 to FA 1998,

“contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

“control” is to be read in accordance with sections 371RB and 371RE, subject to section 371RF,

“the corporation tax assumptions” is to be read in accordance with section 371SC,

“creditable tax”, in relation to a CFC, is to be read in accordance with section 371PA,

“the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,

“insurance business” means the business of effecting or carrying out of contracts of insurance, including the investment of premiums received,

“intellectual property” means—

- (a) any patent, trade mark, registered design, copyright or design right, or
- (b) any licence or other right in relation to anything falling within paragraph (a),

“interest”, as in an interest in a company, is to be read in accordance with section 371VH,

“the local tax amount”, in relation to a CFC, means the amount of tax determined at step 2 in section 371NB(1),

“non-trading finance profits” is to be read in accordance with section 371VG,

“non-trading income” means income which is not trading income,

“property business profits” is to be read in accordance with section 371VI,

[<sup>F238</sup>“relevant finance lease” is to be read in accordance with section 371VIA,]

“relevant interest” is to be read in accordance with Chapter 15,

“tax advantage” has the meaning given by section 1139 of CTA 2010,

“trading finance profits” is to be read in accordance with section 371VG,

“trading income”, in relation to a CFC, means income brought into account in determining the CFC's trading profits for the accounting period in question,

“trading profits”, in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income),

“UK connected capital contribution”, in relation to a CFC, means any capital contribution to the CFC made (directly or indirectly) by a UK resident company connected with the CFC (whether in relation to an issue of shares in the CFC or otherwise), and

“UK permanent establishment”, in relation to a non-UK resident company, means a permanent establishment which the company has in the United Kingdom and through which it carries on a trade in the United Kingdom.

#### Textual Amendments

**F238** Words in s. 371VA substituted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 6, 21](#)

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*Status: Point in time view as at 12/02/2019.*

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### **371VB Accounting periods**

- (1) This section applies for the purposes of this Part.
- (2) An accounting period of a CFC begins—
  - (a) when the CFC becomes a CFC, or
  - (b) immediately after the end of the previous accounting period of the CFC, if the CFC is still a CFC.
- (3) An accounting period of a CFC comes to an end on the occurrence of any of the following—
  - (a) the CFC ceasing to be a CFC,
  - (b) the CFC becoming, or ceasing to be, liable to tax in a territory by reason of domicile, residence or place of management,
  - (c) the CFC ceasing to have any source of income at all, or
  - (d) a company which has a relevant interest in the CFC ceasing to have any relevant interest in the CFC at all or ceasing to be within the charge to corporation tax.
- (4) Without affecting subsections (2) and (3), sections 10(1)(a) to (d), (i) and (j) and (5), 11(1) and (2) and 12 of CTA 2009 (corporation tax accounting periods) apply as they apply for corporation tax purposes.
- (5) Subsection (6) applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain.
- (6) An officer of Revenue and Customs may by notice specify as an accounting period of the CFC such period not exceeding 12 months as the officer considers appropriate.
- (7) Subsection (8) applies if after the giving of a notice under subsection (6)—
  - (a) further facts come to the knowledge of an officer of Revenue and Customs, and
  - (b) as a result of that, it appears to an officer of Revenue and Customs that any accounting period specified in the notice is not the true accounting period.
- (8) An officer of Revenue and Customs must by notice amend the notice under subsection (6) so as to specify what appears to the officer to be the true accounting period.
- (9) A notice under subsection (6) or (8) must be given to each company which the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period in question.

### **371VC Accounting profits**

- (1) This section and section 371VD (with which this section needs to be read) apply for the purposes of this Part.
- (2) A CFC's accounting profits for an accounting period are its pre-tax profits for the period.
- (3) If financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax profits are to be determined by reference to the amounts disclosed in those statements (subject to subsections (4) and (5)).

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- (4) Subsection (5) applies if—
- (a) the CFC's financial statements for the accounting period (or any aspect of them) are not prepared in accordance with an acceptable accounting practice, or
  - (b) no financial statements are prepared at all for the CFC for the accounting period within 12 months after the end of that period.
- (5) The CFC's pre-tax profits are to be determined by reference to the amounts which would have been disclosed had financial statements for the accounting period been prepared for the CFC in accordance with—
- (a) the acceptable accounting practice in accordance with which financial statements for the CFC are normally prepared, or
  - (b) if paragraph (a) cannot be applied, international accounting standards.
- (6) Each of the following is an “acceptable accounting practice”—
- (a) international accounting standards,
  - (b) UK generally accepted accounting practice, and
  - (c) accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.
- (7) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.
- (8) If the CFC's accounting profits (or any amounts included in them) are determined in a currency other than sterling, they are to be translated into their sterling equivalent using the average rate of exchange for the accounting period calculated from daily spot rates.

### **371VD Adjustments to accounting profits**

- (1) This section applies for the purpose of determining a CFC's accounting profits for an accounting period.
- (2) The following are to be ignored in determining the profits—
- (a) any dividend or other distribution which is not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that it would be exempt for the purposes of Part 9A of CTA 2009 (company distributions),
  - (b) any property business profits or property business losses, and
  - (c) any capital profits or losses.
- (3) In subsection (2)(b) “property business losses” means any losses of a UK property business or overseas property business of the CFC; such losses are to be determined in a way corresponding to the way in which property business profits are determined.
- (4) The profits are to include—
- (a) any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary, and
  - (b) the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner, as determined by apportioning that income between the partners on a just and reasonable basis.

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- (5) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (4)(a), the income is to be apportioned between the CFC and the other settlers or beneficiaries on a just and reasonable basis.
- (6) In subsection (4)(b) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.
- (7) Part 4 (transfer pricing) applies as it applies in relation to the determination of the CFC's assumed taxable total profits for the accounting period.
- (8) But subsection (7) is to be ignored if the difference made in the amount of the profits as a result of its application would not be more than £50,000.

### **371VE Cell companies etc**

- (1) This Part applies in relation to unincorporated cells and incorporated cells as if they were non-UK resident companies.
- (2) An “unincorporated cell” is an identifiable part (by whatever name known) of a non-UK resident company which meets the following condition.
- (3) The condition is that, under the law under which the non-UK resident company is incorporated or formed, under the articles of association or other document regulating the non-UK resident company or under any arrangement entered into by or in relation to the non-UK resident company—
  - (a) assets and liabilities of the non-UK resident company may be wholly or mainly allocated to the part of the company in question,
  - (b) liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
  - (c) there are members of the non-UK resident company who have rights in relation to the company's assets which cover only or mainly assets so allocated.
- (4) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (2) as a company for the purposes of this Part; but its assets and liabilities are to be apportioned between it and the unincorporated cell (and any other unincorporated cells which are part of the company) on a just and reasonable basis.
- (5) An “incorporated cell” is an entity (by whatever name known) established under the articles of association or other document regulating a non-UK resident company—
  - (a) which, under the law under which the non-UK resident company is incorporated or formed, has a legal personality distinct from that of the non-UK resident company, but
  - (b) which is not itself a company (ignoring this section).
- (6) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (5) as a company for the purposes of this Part.
- (7) The Treasury may by regulations provide for this Part to apply in relation to—
  - (a) parts of companies falling within specified descriptions, or
  - (b) other entities falling within specified descriptions which are not themselves companies (ignoring this section),as if they were non-UK resident companies.

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- (8) Regulations under subsection (7) may add to, repeal or otherwise amend subsections (1) to (6).

### **371VF Connected persons etc**

- (1) This section applies for the purposes of this Part.
- (2) The following provisions of CTA 2010 apply—
- (a) section 882(2) to (7) (“associated” persons), and
  - (b) section 1122 (“connected” persons).
- (3) A person is “related” to a CFC if—
- (a) the person is connected or associated with the CFC,
  - (b) at least 25% of the CFC's chargeable profits would be apportioned to the person at step 3 in section 371BC(1) were that step required to be taken in relation to the accounting period in question, or
  - (c) if the CFC is a CFC by virtue of section 371RC, the person is connected or associated with either or both of the controllers.

### **371VG Finance profits**

- (1) In this Part “non-trading finance profits”, in relation to a CFC, means any amounts—
- (a) which are included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under—
    - (i) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), or
    - (ii) Part 9A of that Act (company distributions), or
  - <sup>F239</sup>(b) which are included in the CFC's assumed total profits for the accounting period in question and which—
    - (i) arise from a relevant finance lease, but
    - (ii) are not trading profits.]
- (2) Subsection (1) is subject to subsection (3) and sections 371CB(2) and (8), 371CE(2) and 371IA(9).
- (3) Any credits or debits which are to be brought into account in determining the CFC's property business profits for the accounting period in question in accordance with section 371VI(2) are not to be brought into account in determining the CFC's non-trading finance profits.
- (4) In this Part “trading finance profits”, in relation to a CFC, means any amounts included in the CFC's assumed total profits for the accounting period in question—
- (a) which are trading profits by virtue of section 297, 573 or 931W of CTA 2009, or
  - (b) which are trading profits arising from <sup>F240</sup>... a relevant finance lease.
- (5) Subsection (4) is subject to section 371CE(2).



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### Textual Amendments

- F239** S. 371VG(1)(b) substituted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 7\(2\), 21](#)
- F240** Words in s. 371VG(4)(b) omitted (retrospective to 1.1.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 7\(3\), 21](#)

## 371VH Interests in companies

- (1) This section applies for the purposes of this Part.
- (2) The following persons have an “interest” in a company—
  - (a) any person who has, or is entitled to acquire, share capital or voting rights in the company,
  - (b) any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,
  - (c) any person who is entitled—
    - (i) to direct how income or assets of the company are to be applied,
    - (ii) to have such income or assets applied on the person's behalf, or
    - (iii) otherwise to secure that such income or assets will be applied (directly or indirectly) for the person's benefit, and
  - (d) any other person who, either alone or together with other persons, has control of the company.
- (3) In subsection (2) references to a person being entitled to do anything cover cases in which—
  - (a) a person is presently entitled to do it at a future date, or
  - (b) a person will at a future date be entitled to do it.
- (4) In subsection (2)(c) references to a person being entitled to do anything also cover cases in which it is reasonable to suppose that a person is presently able, or will at a future date become able, to do the thing (even though the person presently has, or will have, no entitlement to do the thing).
- (5) Subsection (6) applies if a person's entitlement (or supposed ability) to do anything mentioned in subsection (2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.
- (6) The person is not to have an interest in the company under subsection (2)(c) by virtue of that entitlement (or supposed ability) unless the default has occurred.
- (7) Rights which a person has as a loan creditor of a company are to be ignored for the purposes of subsection (2).
- (8) In subsection (7)—

“loan creditor” has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section, and

“rights” does not include any rights excluded from subsection (7) by subsection (10).
- (9) Subsection (10) applies if, in accordance with generally accepted accounting practice, a loan creditor divides its rights and liabilities under a loan relationship to which it is a

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party as mentioned in section 415(1) of CTA 2009 (loan relationships with embedded derivatives).

F241 ...

(10) Any rights falling within section 415(1)(b) of CTA 2009 are to be excluded from subsection (7).

[ For the purposes of subsection (9), if for any relevant period accounts for a loan  
F242(10A) creditor are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined in relation to the loan creditor for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.]

(11) Subsections (12) and (13) apply if—

- (a) apart from subsection (12), a person has, or two or more persons together have, an interest in a company (“company 1”), and
- (b) company 1 has an interest in another company (“company 2”).

(In paragraph (b) “interest” includes an interest by virtue of subsection (12).)

(12) The person or persons mentioned in subsection (11)(a) are to be taken to have an interest in company 2 (and references to a person's interest in a company are to be read accordingly).

(13) For the purposes of references to one person's interest in a company being the same as another person's interest—

- (a) the person mentioned in subsection (11)(a), or
- (b) each of the persons so mentioned,

is to be taken as having, to the extent of that person's interest in company 1, the same interest as company 1 has in company 2.

(14) If two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they are taken to have the interest in equal shares.

#### Textual Amendments

F241 Words in s. 371VH(9) omitted (retrospective to 1.1.2013) by virtue of [Finance Act 2013 \(c. 29\), Sch. 47 paras. 8\(2\), 21](#)

F242 S. 371VH(10A) inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\), Sch. 47 paras. 8\(3\), 21](#)

### 371VI Property business profits

(1) Subject to what follows, in this Part “property business profits”, in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).

(2) Any credits or debits—

- (a) which are brought into account under Part 5 of CTA 2009 in determining the CFC's assumed total profits for the accounting period, and
- (b) which fall within subsection (3) or (5),

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are to be brought into account in determining the CFC's property business profits.

- (3) Credits and debits fall within this subsection so far as they are from a debtor relationship of the CFC where the loan which is the subject of the debtor relationship—
  - (a) is made and used solely for the purposes of a relevant property business, and
  - (b) is not used to any extent for the purpose of funding (directly or indirectly)—
    - (i) a loan to any other person, or
    - (ii) so far as not covered by sub-paragraph (i), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (4) In subsection (3) “debtor relationship” has the meaning given by section 302(6) of CTA 2009 (and does not include anything which, although not falling within section 302(1) of that Act, is treated for any purpose as if it were a debtor relationship); and “loan” is to be read accordingly.
- (5) Credits and debits fall within this subsection so far as they—
  - (a) are from any derivative contract or other arrangement entered into by the CFC as a hedge of risk in connection with a relevant property business, and
  - (b) are attributable to that hedge of risk.
- (6) “Relevant property business” means a UK property business or overseas property business of the CFC, profits of which are included in the CFC's property business profits apart from subsection (2).

### [<sup>F243</sup>371] ~~VR~~ Relevant finance leases

- (1) In this Part “relevant finance lease” means an arrangement falling within subsection (2) or (3).

(An arrangement which is a loan relationship of any company does not fall within either of those subsections.)
- (2) An arrangement falls within this subsection if—
  - (a) it provides for an asset to be leased or otherwise made available by a person (“the lessor”) to another person, and
  - (b) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated in the accounts of the lessor, or of a person connected with the lessor, as a finance lease or a loan.
- (3) A hire-purchase, conditional sale or other arrangement relating to an asset falls within this subsection if it does not fall within subsection (2) but is of a similar character to an arrangement which would fall within that subsection.
- (4) If for any relevant period accounts for a person are not prepared in accordance with international accounting standards or UK generally accepted accounting practice, any question relating to generally accepted accounting practice is to be determined for the purposes of this section in relation to that person for that period by reference to generally accepted accounting practice in relation to accounts prepared in accordance with international accounting standards.
- (5) In this section “accounts”, in relation to a company, includes accounts relating to two or more companies of which that company is one.]

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### Textual Amendments

**F243** S. 371VIA inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 47 paras. 9, 21](#)

## 371VJ Regulations

Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.]

### [<sup>F244</sup>PART 10]

#### [<sup>F244</sup>CORPORATE INTEREST RESTRICTION]

### Textual Amendments

**F244** Pt. 10: the existing Pt. 10 renumbered as Pt. 11 (except for ss. 375, 376 which are repealed), the existing ss. 372-374, 377-382 renumbered as ss. 499-507 and a new Pt. 10 (ss. 372-498) inserted (with effect in accordance with [Sch. 5 para. 25\(1\)-\(3\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 1](#), [10\(1\)\(2\)\(a\)\(3\)](#) (with [Sch. 5 paras. 27, 32-34](#))

### Modifications etc. (not altering text)

- C44** Pt. 10 excluded by 2010 c. 4, s. 937NA (as inserted (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 7](#))
- C45** Pt. 10 excluded by 2010 c. 4, s. 938V(d) (as substituted (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 9](#))
- C46** Pt. 10 excluded by 2010 c. 4, s. 938N(e) (as substituted (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 8](#))

### [<sup>F244</sup>CHAPTER 1]

#### [<sup>F244</sup>INTRODUCTION]

## [<sup>F244</sup>372 Overview

- (1) This Part contains provision that—
  - (a) disallows certain amounts that a company would (apart from this Part) be entitled to bring into account for the purposes of corporation tax in respect of interest and other financing costs, and
  - (b) allows certain amounts disallowed under this Part in previous accounting periods to be brought into account in later accounting periods.
- (2) In this Chapter—
  - (a) section 373 defines some key concepts including, in particular, “the total disallowed amount” in relation to a period of account of a worldwide group, and
  - (b) section 374 provides for Schedule 7A to have effect.
- (3) Chapter 2 provides for—

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- (a) the disallowance in certain circumstances of tax-interest expense amounts of companies that are members of a worldwide group, and
  - (b) the carrying forward of disallowed tax-interest expense amounts, and for bringing those amounts into account in certain circumstances in relation to a later period of account of the worldwide group.
- (4) Chapter 3—
- (a) defines “a tax-interest expense amount” and “a tax-interest income amount” of a company for a period of account of a worldwide group, which are amounts that are (or apart from this Part would be) brought into account for the purposes of corporation tax,
  - (b) defines “the net tax-interest expense” of a company for a period of account of a worldwide group, which is any excess of the company's tax-interest expense amounts for the period over its tax-interest income amounts for the period,
  - (c) defines “the net tax-interest income” of a company for a period of account of a worldwide group, which is any excess of the company's tax-interest income amounts for the period over its tax-interest expense amounts for the period, and
  - (d) defines “aggregate net tax-interest expense” and “aggregate net tax-interest income” of a worldwide group for a period of account of the worldwide group, which are made up of each member of the group's net tax-interest expense or net tax-interest income for the period.
- (5) Chapter 4 contains provision about the calculation of “the interest capacity” of a worldwide group for a period of account of the group, which is the aggregate of the interest allowance for the period and any unused interest allowance of the group from the previous 5 years (or, if that aggregate is less than the de minimis amount, the de minimis amount).
- (6) Chapter 5 makes provision about the calculation of “the interest allowance” of a worldwide group for a period of account of the group.
- The interest allowance for a period of account is calculated using the fixed ratio method unless the group elects for the group ratio method to be used for the period.
- (7) Chapter 6 defines concepts used in Chapter 5 including—
- the “tax-EBITDA” of a company for a period of account of a worldwide group (which is an amount derived from amounts brought into account for the purposes of corporation tax);
  - the “aggregate tax-EBITDA” of a worldwide group for a period of account of the group (which is an amount derived from the tax-EBITDA of members of the group).
- (8) Chapter 7 defines additional concepts used in Chapter 5 including—
- “the net group-interest expense”, “the adjusted net group-interest expense” and “the qualifying net group-interest expense” of a worldwide group for a period of account of the group (which are amounts derived from the financial statements of the worldwide group);
  - the “group-EBITDA” of the worldwide group for a period of account of the group (which is an amount derived from the financial statements of the worldwide group).

*Status: Point in time view as at 12/02/2019.*

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- (9) Chapter 8 contains provision altering the way in which this Part has effect in relation to the provision of public infrastructure assets or the carrying on of certain other related activities.
- (10) Chapter 9 contains special provision altering the operation of certain provisions of this Part in relation to—
  - (a) particular types of company (for example, banking companies, companies carrying on oil-related activities, REITs or insurance companies), or
  - (b) particular types of transaction or accounting (for example, long funding operating leases or fair value accounting).
- (11) Chapter 10 contains rules connected with tax avoidance.
- (12) Chapter 11 contains the remaining interpretative and supplementary provision, including definitions of—
  - “related party”;
  - “a worldwide group”;
  - “ultimate parent”;
  - “period of account” of a worldwide group.]

**[<sup>F244</sup>373 Meaning of “subject to interest restrictions”, “the total disallowed amount” etc**

- (1) A worldwide group is “subject to interest restrictions” in a period of account of the group if—
  - (a) the aggregate net tax-interest expense of the group for the period (see section 390), exceeds
  - (b) the interest capacity of the group for the period (see section 392).
- (2) “The total disallowed amount” of a worldwide group in a period of account of the group is—
  - (a) if the group is subject to interest restrictions in the period, the amount of the excess mentioned in subsection (1);
  - (b) otherwise, nil.
- (3) “The interest reactivation cap” of a worldwide group in a period of account of the group is (subject to subsection (4))—
  - (a) the interest allowance of the group for the period (see section 396), less
  - (b) the aggregate net tax-interest expense of the group for the period.
- (4) If the amount determined under subsection (3) is a negative amount, the interest reactivation cap of the worldwide group in the period is nil.
- (5) A worldwide group is “subject to interest reactivations” in a period of account of the group if—
  - (a) the interest reactivation cap of the group in the period is not nil, and
  - (b) at least one member of the group is within the charge to corporation tax at any time during the period, and has an amount available for reactivation in the return period that is not nil (see paragraph 26 of Schedule 7A).
- (6) This section has effect for the purposes of this Part.]

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## **[<sup>F244</sup>374 Interest restriction returns**

- (1) Schedule 7A makes provision about—
  - (a) the preparation and submission of interest restriction returns by reporting companies of worldwide groups, and
  - (b) other related matters such as enquiries and information powers.
- (2) Part 1 of that Schedule includes provision—
  - (a) for the appointment of a reporting company of a worldwide group for a period of account, but
  - (b) for companies (“non-consenting companies”) to elect to be unaffected by allocations of interest restrictions made by the company.
- (3) Part 2 of that Schedule includes provision—
  - (a) for various elections to be made in an interest restriction return that are relevant to the operation of this Part (for example, the group ratio election),
  - (b) entitling the reporting company of a worldwide group to allocate interest restrictions among its members but with a rule that allocates a pro-rata share to a non-consenting company, and
  - (c) entitling the reporting company of a worldwide group to allocate interest reactivations among its members.
- (4) The remaining Parts of that Schedule contain provision about—
  - (a) the keeping and preservation of records (see Part 3),
  - (b) enquiries into interest restriction returns (see Part 4),
  - (c) determinations made by officers of Revenue and Customs in the event of the breach of filing or other obligations (see Part 5),
  - (d) information powers exercisable by members of the group (see Part 6),
  - (e) information powers exercisable by officers of Revenue and Customs (see Part 7), and
  - (f) the amendment of company tax returns to reflect the effect of this Part of this Act and supplementary matters (see Parts 8 and 9).]

## **[<sup>F244</sup>CHAPTER 2]**

### **[<sup>F244</sup>DISALLOWANCE AND REACTIVATION OF TAX-INTEREST EXPENSE AMOUNTS]**

## **[<sup>F244</sup>375 Disallowance of deductions: full interest restriction return submitted**

- (1) This section applies where—
  - (a) an interest restriction return is submitted for a period of account of a worldwide group (“the relevant period of account”),
  - (b) the return complies with the requirements of paragraph 20(3) of Schedule 7A (requirements for full interest restriction return), and
  - (c) the return includes a statement that the group is subject to interest restrictions in the return period.
- (2) A company that is listed on the statement under paragraph 22 of Schedule 7A (statement of allocated interest restrictions) must, in any accounting period for which the statement specifies an allocated disallowance, leave out of account tax-interest expense amounts that, in total, equal that allocated disallowance.

*Status: Point in time view as at 12/02/2019.*

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- (3) A non-consenting company in relation to the return may—
- (a) elect that subsection (2) is not to apply in relation to such relevant accounting period of the company as is specified in the election, or
  - (b) revoke an election previously made.
- (4) If—
- (a) an election under this section has effect in relation to an accounting period of a company, and
  - (b) paragraph 24 of Schedule 7A allocates to that period a pro-rata share of the total disallowed amount that is not nil,
- the company must leave out of account in that period tax-interest expense amounts that, in total, equal that pro-rata share.
- (5) See section 377 for provision as to which tax-interest expense amounts are to be left out of account as a result of this section.]

**[<sup>F244</sup>376 Disallowance of deductions: no return, or non-compliant return, submitted**

- (1) This section applies where—
- (a) a worldwide group is subject to interest restrictions in a period of account of the group (“the relevant period of account”),
  - (b) the relevant date has passed, and
  - (c) condition A, B or C is met.
- (2) In this section “the relevant date” means—
- (a) where the appointment of a reporting company has effect in relation to the relevant period of account, the filing date in relation to the period (see paragraph 7(5) of Schedule 7A);
  - (b) otherwise, the last day of the period of 12 months beginning with the end of the relevant period of account.
- (3) Condition A is that no appointment of a reporting company has effect in relation to the relevant period of account.
- (4) Condition B is that—
- (a) the appointment of a reporting company has effect in relation to the relevant period of account, and
  - (b) no interest restriction return has been submitted for the period.
- (5) Condition C is that—
- (a) the appointment of a reporting company has effect in relation to the relevant period of account,
  - (b) an interest restriction return has been submitted for the period, and
  - (c) the return does not comply with the requirements of paragraph 20(3) of Schedule 7A (for example by including inaccurate figures).
- (6) A relevant company must, in any accounting period to which paragraph 24 of Schedule 7A allocates a pro-rata share of the total disallowed amount that is not nil, leave out of account tax-interest expense amounts that, in total, equal that pro-rata share.



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- (7) See section 377 for provision as to which tax-interest expense amounts are to be left out of account as a result of this section.
- (8) In this section “relevant company” means a company that was a member of the worldwide group at any time during the relevant period of account.]

**[<sup>F244</sup>377 Disallowance of deductions: identification of the tax-interest amounts to be left out of account**

- (1) This section applies where—
  - (a) a company is required to leave tax-interest expense amounts out of account in an accounting period under section 375 or 376, and
  - (b) the total of the tax-interest expense amounts that, apart from that provision, would be brought into account in the accounting period exceeds the total of the tax-interest expense amounts that are required by that provision to be left out of account in that period.
- (2) Tax-interest expense amounts must (subject to the following provisions of this section) be left out of account in the following order.

*First*, leave out of account tax-interest expense amounts that meet condition A in section 382 and would (if brought into account) be brought into account under Part 5 of CTA 2009 (non-trading debits in respect of loan relationships).

*Second*, leave out of account tax-interest expense amounts that meet condition B in section 382 and would (if brought into account) be brought into account under Part 5 of CTA 2009 as a result of section 574 of that Act (non-trading debits in respect of derivative contracts).

*Third*, leave out of account tax-interest expense amounts that meet condition A in section 382 and would (if brought into account) be brought into account under Part 3 of CTA 2009 as a result of section 297 of that Act (debts in respect of loan relationships treated as expenses of trade).

*Fourth*, leave out of account tax-interest expense amounts that meet condition B in section 382 and would (if brought into account) be brought into account under Part 3 of CTA 2009 as a result of section 573 of that Act (debts in respect of derivative contracts treated as expenses of trade).

*Fifth*, leave out of account tax-interest expense amounts that meet condition C in section 382 and do not also meet condition A or B in that section (finance leases, debt factoring and service concession arrangements).
- (3) The company may—
  - (a) elect that subsection (2) is not to apply to the accounting period, or
  - (b) revoke an election previously made.
- (4) An election under this section must specify the particular tax-interest expense amounts that are to be left out of account.]

**[<sup>F244</sup>378 Disallowed tax-interest expense amounts carried forward**

- (1) For the purposes of this Part a tax-interest expense amount of a company is “disallowed” in an accounting period if the company is required to leave it out of account in that accounting period under section 375 or 376.

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(2) A tax-interest expense amount of a company that is disallowed in an accounting period is (subject to the remaining provisions of this section) carried forward to subsequent accounting periods.

(3) Where—

- (a) a tax-interest expense amount of a company would (apart from this Part) be brought into account in calculating the profits or losses of a trade carried on by the company in an accounting period,
- (b) the tax-interest expense amount is disallowed in that accounting period, and
- (c) in a subsequent accounting period (“the later accounting period”) the company ceases to carry on the trade, or the scale of the activities in the trade becomes small or negligible,

the tax-interest expense amount is not carried forward to <sup>F245</sup> ... accounting periods after the later accounting period.

(4) Where—

- (a) a tax-interest expense amount of a company would (apart from this Part) be brought into account in calculating the profits or losses of a trade carried on by the company in an accounting period,
- (b) the tax-interest expense amount is disallowed in that accounting period, and
- (c) in a subsequent accounting period (“the later accounting period”) the trade is uncommercial and non-statutory,

the tax-interest expense amount is not carried forward to the later accounting period or accounting periods after the later accounting period.

(5) For the purposes of subsection (4), a trade is “uncommercial and non-statutory” in an accounting period if, were the company to have made a loss in the trade in the period, relief for the loss under section 37 of CTA 2010 (relief for trade losses against total profits) would have been unavailable by virtue of section 44 of that Act (trade must be commercial or carried on for statutory functions).

(6) Where—

- (a) a tax-interest expense amount of a company would (apart from this Part) be brought into account in calculating the profits or losses of an investment business carried on by the company in an accounting period,
- (b) the tax-interest expense amount is disallowed in that accounting period, and
- (c) in a subsequent accounting period (“the later accounting period”) the company ceases to carry on the investment business, or the scale of the activities in the investment business becomes small or negligible,

the tax-interest expense amount is not carried forward to <sup>F246</sup> ... accounting periods after the later accounting period.

(7) Where a tax-interest expense amount—

- (a) is disallowed in an accounting period,
- (b) is carried forward to a subsequent accounting period (“the later accounting period”), and
- (c) is brought into account in the later accounting period in accordance with section 379,

it is not carried forward to accounting periods after the later accounting period.]

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#### Textual Amendments

- F245** Words in s. 378(3) omitted (retrospectively) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 18, 23\(1\)](#)
- F246** Words in s. 378(6) omitted (retrospectively) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 18, 23\(1\)](#)

### [<sup>F244</sup>379 **Reactivation of interest**

- (1) This section applies where—
  - (a) an interest restriction return is submitted for a period of account of a worldwide group (“the relevant period of account”),
  - (b) the return complies with the requirements of paragraph 20(3) of Schedule 7A (requirements for full interest restriction return), and
  - (c) the return contains a statement that the group is subject to interest reactivations in the return period.
- (2) A company that is listed on the statement under paragraph 25 of Schedule 7A (statement of allocated interest reactivations) must, in the specified accounting period, bring into account tax-interest expense amounts that—
  - (a) are brought forward to the specified accounting period from an earlier accounting period, and
  - (b) in total, equal the allocated reactivation for the return period.
- (3) A tax-interest expense amount is brought into account in the specified accounting period under subsection (2) by being treated as a tax-interest expense amount of the specified accounting period (so that, for example, a tax-interest expense amount that is a relevant loan relationship debit falling within section 383(2)(a)(ii) is brought into account in the specified period as a non-trading debit under Part 5 of CTA 2009).
- (4) See section 380 for provision as to which tax-interest expense amounts are to be brought into account under subsection (2).
- (5) In this section “the specified accounting period” means—
  - (a) the earliest relevant accounting period of the company, or
  - (b) where the company became a member of the relevant worldwide group during the relevant period of account, the earliest relevant accounting period of the company in which it was a member of the group.]

### [<sup>F244</sup>380 **Reactivation of deductions: identification of the tax-interest amounts to be brought into account**

- (1) This section applies where—
  - (a) a company is required to bring tax-interest expense amounts into account in an accounting period under section 379, and
  - (b) the total of the tax-interest expense amounts that are brought forward to the accounting period from earlier accounting periods exceeds the total of the tax-interest expense amounts that are required by that provision to be brought into account in that accounting period.

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- (2) Tax-interest expense amounts must (subject to the following provisions of this section) be brought into account in the following order.

*First*, bring into account tax-interest expense amounts that meet condition A in section 382 and are brought into account under Part 5 of CTA 2009 (non-trading debits in respect of loan relationships).

*Second*, bring into account tax-interest expense amounts that meet condition B in section 382 and are brought into account under Part 5 of CTA 2009 as a result of section 574 of that Act (non-trading debits in respect of derivative contracts).

*Third*, bring into account tax-interest expense amounts that meet condition A in section 382 and are brought into account under Part 3 of CTA 2009 as a result of section 297 of that Act (debits in respect of loan relationships treated as expenses of trade).

*Fourth*, bring into account tax-interest expense amounts that meet condition B in section 382 and are brought into account under Part 3 of CTA 2009 as a result of section 573 of that Act (debits in respect of derivative contracts treated as expenses of trade).

*Fifth*, bring into account tax-interest expense amounts that meet condition C in section 382 and do not also meet condition A or B in that section (finance leases, debt factoring and service concession arrangements).

- (3) The company may—

- (a) elect that subsection (2) is not to apply to the accounting period, or
- (b) revoke an election previously made.

- (4) An election under this section must specify the particular tax-interest expense amounts that are to be brought into account.]

**[<sup>F244</sup>381 Set-off of disallowances and reactivations in the same accounting period**

- (1) This section applies where, as a result of the operation of this Part in relation to different periods of account (whether of the same or a different worldwide group), a company would, apart from this section—

- (a) be required to leave out of account one or more tax-interest expense amounts in an accounting period under section 375 or 376, and
- (b) be required to bring one or more tax-interest expense amounts into account in that accounting period under section 379.

- (2) In this section—

- (a) “the gross disallowed amount” means the amount, or total of the amounts, mentioned in subsection (1)(a);
- (b) “the gross reactivated amount” means the amount, or total of the amounts, mentioned in subsection (1)(b).

- (3) Where the gross disallowed amount is equal to the gross reactivated amount, no tax-interest expense amounts are to be left out of account in the accounting period under this Part or brought into account in the accounting period under this Part.

- (4) Where the gross disallowed amount is more than the gross reactivated amount—

- (a) the requirement in section 375 or 376 is to leave out of account tax-interest expense amounts that, in total, equal the gross disallowed amount less the gross reactivated amount, and

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- (b) no amount is to be brought into account in the accounting period under section 379.
- (5) Where the gross reactivated amount is more than the gross disallowed amount—
  - (a) no amount to be left out of account in the accounting period under section 375 or 376, and
  - (b) the requirement in section 379 is to bring into account the gross reactivated amount less the gross disallowed amount.]

### [<sup>F244</sup>CHAPTER 3]

#### [<sup>F244</sup>TAX-INTEREST AMOUNTS]

##### [<sup>F244</sup>Tax-interest expense and income amounts: basic rules]

#### [<sup>F244</sup>382 The tax-interest expense amounts of a company

- (1) References in this Part to a “tax-interest expense amount” of a company for a period of account of a worldwide group are to any amount that—
  - (a) is (or apart from this Part would be) brought into account for the purposes of corporation tax in a relevant accounting period of the company, and
  - (b) meets condition A, B or C.
- (2) Condition A is that the amount is a relevant loan relationship debit (see section 383).
- (3) Condition B is that the amount is a relevant derivative contract debit (see section 384).
- (4) Condition C is that the amount is in respect of the financing cost implicit in amounts payable under a relevant arrangement or transaction.
- (5) In subsection (4) “relevant arrangement or transaction” means—
  - (a) a finance lease,
  - (b) debt factoring, or any similar transaction, or
  - (c) a service concession arrangement if and to the extent that the arrangement is accounted for as a financial liability.
- (6) Subsection (8) applies if an accounting period in which a tax-interest expense amount is (or apart from this Part would be) brought into account for the purposes of corporation tax contains one or more disregarded periods.
- (7) A “disregarded period” is any period falling within the accounting period—
  - (a) which does not fall within the period of account of the worldwide group, or
  - (b) throughout which the company is not a member of the group.
- (8) Where this subsection applies, the tax-interest expense amount mentioned in subsection (6) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that subsection.
- (9) An amount may be reduced to nil under subsection (8).
- (10) If—
  - (a) an amount would have met condition A, B or C but for the application of a rule preventing its deduction,

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- (b) some or all of it is deductible at a subsequent time as a result of the application of another rule, and
  - (c) none of conditions A to C are met at that time,
- so much of the amount as is subsequently deductible is treated, at that time, as meeting whichever of condition A, B or C would have been met but for the application of the rule mentioned in paragraph (a).
- (11) An example of a case to which subsection (10) applies is a case where—
- (a) an amount is prevented from being deducted as a result of any provision made by Part 6A (hybrid and other mismatches), and
  - (b) another provision of that Part subsequently applies so as to permit some or all of it to be deducted from total profits.]

### [<sup>F244</sup>383 Relevant loan relationship debits

- (1) This section applies for the purposes of section 382.
- (2) An amount is a “relevant loan relationship debit” if—
  - (a) it is a debit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a loan relationship under—
    - (i) Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) Part 5 of that Act (other loan relationships), and
  - (b) is not an excluded debit.
- (3) A debit is “excluded” for the purposes of subsection (2)(b) if—
  - (a) it is in respect of an exchange loss (within the meaning of Parts 5 and 6 of CTA 2009), or
  - (b) it is in respect of an impairment loss.

### 384 Relevant derivative contract debits

- (1) This section applies for the purposes of section 382.
- (2) An amount is a “relevant derivative contract debit” if—
  - (a) it is a debit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a derivative contract under—
    - (i) Part 3 of CTA 2009 as a result of section 573 of that Act (derivative contracts for purposes of trade), or
    - (ii) Part 5 of that Act as a result of section 574 of that Act (other derivative contracts),
  - (b) it is not an excluded debit, and
  - (c) the condition in subsection (4) is met.
- (3) A debit is “excluded” for the purposes of subsection (2)(b) if—
  - (a) it is in respect of an exchange loss (within the meaning of Part 7 of CTA 2009),
  - (b) it is in respect of an impairment loss, or
  - [<sup>F247</sup>(c) it is in respect of a risk arising in the ordinary course of a trade (other than a risk arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group).]

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- [ For the purposes of subsection (3)(c) a debit is in respect of a risk arising in the ordinary  
F248(3A) course of “a financial trade” only so far as the risk relates to an amount which is or  
is likely to be—
- (a) a tax-interest expense amount, or
  - (b) a tax-interest income amount,
- of the company in any relevant accounting period.]
- (4) The condition referred to in subsection (2)(c) is that the underlying subject matter of the derivative contract consists only of one or more of the following—
- (a) interest rates;
  - (b) any index determined by reference to income or retail prices;
  - (c) currency;
  - (d) an asset or liability representing a loan relationship;
  - (e) any other underlying subject matter which is—
    - (i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) For the purposes of this section, whether part of the underlying subject matter of the derivative contract is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.
- (6) In this section “underlying subject matter” has the same meaning as in Part 7 of CTA 2009.

#### Textual Amendments

**F247** S. 384(3)(c) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 8 para. 2\(2\)](#)

**F248** S. 384(3A) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 8 para. 2\(3\)](#)

### 385 The tax-interest income amounts of a company

- (1) References in this Part to a “tax-interest income amount” of a company for a period of account of a worldwide group are to any amount that—
- (a) is (or apart from this Part would be) brought into account for the purposes of corporation tax in a relevant accounting period of the company, and
  - (b) meets condition A, B, C or D.
- (2) Condition A is that the amount is a relevant loan relationship credit (see section 386).
- (3) Condition B is that the amount is a relevant derivative contract credit (see section 387).
- (4) Condition C is that the amount is in respect of the financing income implicit in amounts receivable under a relevant arrangement or transaction.
- (5) In subsection (4) “relevant arrangement or transaction” means—
- (a) a finance lease,
  - (b) debt factoring, or any similar transaction, or

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- (c) a service concession arrangement if and to the extent that the arrangement is accounted for as a financial asset.
- (6) Condition D is that the amount is in respect of income that—
  - (a) is receivable from another company, and
  - (b) is in consideration of the provision of a guarantee of any borrowing of that other company.
- (7) Subsection (9) applies if an accounting period in which a tax-interest income amount is (or apart from this Part would be) brought into account for the purposes of corporation tax contains one or more disregarded periods.
- (8) A “disregarded period” is any period falling within the accounting period—
  - (a) which does not fall within the period of account of the worldwide group, or
  - (b) throughout which the company is not a member of the group.
- (9) Where this subsection applies, the tax-interest income amount mentioned in subsection (7) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that subsection.
- (10) An amount may be reduced to nil under subsection (9).

### **386 Relevant loan relationship credits**

- (1) This section applies for the purposes of section 385.
- (2) An amount is a “relevant loan relationship credit” if—
  - (a) it is a credit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a loan relationship under—
    - (i) Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) Part 5 of that Act (other loan relationships), and
  - (b) it is not an excluded credit.
- (3) A credit is “excluded” for the purposes of subsection (2)(b) if—
  - (a) it is in respect of an exchange gain (within the meaning of Parts 5 and 6 of CTA 2009), or
  - (b) it is in respect of the reversal of an impairment loss.

### **387 Relevant derivative contract credits**

- (1) This section applies for the purposes of section 385.
- (2) An amount is a “relevant derivative contract credit” if—
  - (a) it is a credit that is (or apart from this Part would be) brought into account for the purposes of corporation tax in respect of a derivative contract under—
    - (i) Part 3 of CTA 2009 as a result of section 573 of that Act (derivative contracts for purposes of trade), or
    - (ii) Part 5 of that Act as a result of section 574 of that Act (other derivative contracts),
  - (b) is not an excluded credit, and
  - (c) the condition in subsection (4) is met.



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- (3) A credit is “excluded” for the purposes of subsection (2)(b) if—
- (a) it is in respect of an exchange gain (within the meaning of Part 7 of CTA 2009),
  - (b) it is in respect of the reversal of an impairment loss, or
  - <sup>F249</sup>(c) it is in respect of a risk arising in the ordinary course of a trade (other than a risk arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group).]
- [ For the purposes of subsection (3)(c) a credit is in respect of a risk arising in the ordinary course of “a financial trade” only so far as the risk relates to an amount which is or is likely to be—
- (a) a tax-interest expense amount, or
  - (b) a tax-interest income amount,
- of the company in any relevant accounting period.]
- (4) The condition referred to in subsection (2)(c) is that the underlying subject matter of the derivative contract consists only of one or more of the following—
- (a) interest rates;
  - (b) any index determined by reference to income or retail prices;
  - (c) currency;
  - (d) an asset or liability representing a loan relationship;
  - (e) any other underlying subject matter which is—
    - (i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) For the purposes of this section, whether part of the underlying subject matter of the derivative contract is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.
- (6) In this section “underlying subject matter” has the same meaning as in Part 7 of CTA 2009.]

#### Textual Amendments

**F249** S. 387(3)(c) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 3\(2\)](#)

**F250** S. 387(3A) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 3\(3\)](#)

*<sup>F244</sup>Double taxation relief*

### 388 Double taxation relief

- (1) This section applies where—
- (a) apart from this section, an amount (“the relevant amount”) would be a tax-interest income amount brought into account for the purposes of corporation tax in a relevant accounting period (“the relevant accounting period”) of a company, and

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- (b) the amount of corporation tax chargeable in respect of the relevant amount is reduced under section 18(2) (entitlement to credit for foreign tax reduces UK tax by amount of the credit).
- (2) The relevant amount is not a tax-interest income amount to the extent that it consists of notional untaxed income.
- (3) For this purpose, the amount of the relevant amount that consists of “notional untaxed income” is—
- A B
- where—
- A is the amount of the reduction mentioned in subsection (1)(b);
- B is the rate of corporation tax payable by the company, before any credit under Part 2 (double taxation relief), on the company's profits for the relevant accounting period.]

*f<sup>244</sup> Net tax-interest expense*

### **389 The “net tax-interest expense” or “net tax-interest income” of a company**

- (1) A company has “net tax-interest expense” for a period of account of a worldwide group if the total of its tax-interest expense amounts for the period exceeds the total of its tax-interest income amounts for the period.
- (2) The amount of the net tax-interest expense of the company for the period is the amount of the excess.
- (3) A company has “net tax-interest income” for a period of account of a worldwide group if the total of its tax-interest income amounts for the period exceeds the total of its tax-interest expense amounts for the period.
- (4) The amount of the net tax-interest income of the company for the period is the amount of the excess.
- (5) The net tax-interest expense or net tax-interest income of a company for a period of account of a worldwide group is “referable” to an accounting period of the company to the extent that it comprises tax-interest expense amounts or tax-interest income amounts that are (or apart from this Part would be) brought into account in the accounting period.
- (6) This section applies for the purposes of this Part.

### **390 The worldwide group's aggregate net tax-interest expense and income**

- (1) The “aggregate net tax-interest expense” of a worldwide group for a period of account of the group is (subject to subsection (2))—
- (a) the total of the net tax-interest expense for the period of each relevant company that has such an amount, less
- (b) the total of the net tax-interest income for the period of each relevant company that has such an amount.
- (2) Where the amount determined under subsection (1) is negative, the “aggregate net tax-interest expense” of the group for the period is nil.

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- (3) The “aggregate net tax-interest income” of a worldwide group for a period of account of the group is (subject to subsection (4))—
  - (a) the total of the net tax-interest income for the period of each relevant company that has such an amount, less
  - (b) the total of the net tax-interest expense for the period of each relevant company that has such an amount.
- (4) Where the amount determined under subsection (3) is negative, the “aggregate net tax-interest income” of the group for the period is nil.
- (5) In this section “relevant company” means a company that was a member of the group at any time during the period of account of the group.
- (6) This section applies for the purposes of this Part.]

#### [<sup>F244</sup> Interpretation

### 391 Meaning of “impairment loss”

- (1) In this Part “impairment loss” means a loss in respect of the impairment of a financial asset.
- (2) A reference to a debit in respect of an impairment loss does not include a debit that is (or apart from this Part would be) brought into account in an accounting period in respect of an asset for which fair value accounting is used.]

### [<sup>F251</sup> 391A Amounts capitalised in carrying value of intangible fixed assets

In determining for the purposes of this Part whether an amount is a tax-interest expense amount or tax-interest income amount, section 906(1) of CTA 2009 (priority of intangible fixed asset rules) does not apply in respect of any matter which may be brought into account in accordance with Part 5 or 7 of that Act.]

#### Textual Amendments

**F251** S. 391A inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 2](#)

## [<sup>F244</sup> CHAPTER 4

### INTEREST CAPACITY

### 392 The interest capacity of a worldwide group for a period of account

- (1) For the purposes of this Part “the interest capacity” of a worldwide group for a period of account of the group (“the current period”) is (subject to subsection (2))—

A + B

where—

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A is the interest allowance of the group for the current period (see Chapter 5);

B is the aggregate of the interest allowances of the group for periods before the current period so far as they are available in the current period (see section 393).

- (2) Where the amount determined under subsection (1) is less than the de minimis amount for the current period, the interest capacity of the worldwide group for the period is the de minimis amount.
- (3) For this purpose “the de minimis amount” for a period of account is—
  - (a) £2 million, or
  - (b) where the period is more than or less than a year, the amount mentioned in paragraph (a) proportionately increased or reduced.

### **393 Amount of interest allowance for a period that is “available” in a later period**

- (1) This section applies for the purposes of this Chapter.
- (2) The amount of the interest allowance of a worldwide group for a period of account (“the originating period”) that is “available” in a later period of account of the group (“the receiving period”) is (subject to subsection (5)) the lower of amounts A and B.
- (3) Amount A is—
  - (a) the amount of the interest allowance for the originating period, less
  - (b) the total of the amount or amounts (if any) of that interest allowance that were used in the originating period, or in any subsequent period of account of the group before the receiving period (see section 394).
- (4) Amount B is the amount (if any) of the interest allowance for the originating period that is unexpired in the receiving period (see section 395).
- (5) The amount of the interest allowance for the originating period that is “available” in the receiving period is nil if—
  - (a) an abbreviated return election [<sup>F252</sup>has effect] in relation to the originating period, the receiving period or any intervening period of account of the group, or
  - (b) an interest restriction return is not submitted for any such period.

#### **Textual Amendments**

**F252** Words in s. 393(5)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\), Sch. 8 paras. 19, 23\(1\)](#)

### **394 When interest allowance is “used”**

- (1) This section applies for the purposes of this Chapter.
- (2) The amount of the interest allowance of a worldwide group for a period of account of the group (“the originating period”) that is “used” in the originating period is the lower of—
  - (a) the interest allowance for the originating period, and
  - (b) the sum of—

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- (i) the aggregate net tax-interest expense of the group for the originating period;
    - (ii) the total amount of tax-interest expense amounts required to be brought into account in the originating period under section 379 (reactivation of interest) by members of the group.
  - (3) The amount of the interest allowance for the originating period that is “used” in a later period of account of the group (“the receiving period”) is the lower of—
    - (a) the interest allowance so far as it is available in the receiving period (see section 393), and
    - (b) the relevant part of the aggregate net tax-interest expense of the group for the receiving period (see subsection (4)).
  - (4) In subsection (3)(b) “the relevant part of the aggregate net tax-interest expense of the group for the receiving period” is (subject to subsection (5))—
$$A - B - C$$
where—

A is the aggregate net tax-interest expense of the group for the receiving period;

B is the interest allowance of the group for the receiving period;

C is the amount of the interest allowance of the group for any period before the originating period that is used in the receiving period.
  - (5) Where the amount determined under subsection (4) is negative, “the relevant part of the aggregate net tax-interest expense of the group for the receiving period” is nil.

### **395 Amount of interest allowance for a period of account that is “unexpired” in later period**

- (1) This section contains provision for determining for the purposes of this Chapter the extent to which an interest allowance of a worldwide group for a period of account (“the originating period”) is “unexpired” in a later period of account of the group (“the receiving period”).
- (2) If the receiving period—
  - (a) begins 5 years or less after the originating period begins, and
  - (b) ends 5 years or less after the originating period ends,all of the interest allowance for the originating period is unexpired in the receiving period.
- (3) If the receiving period begins 5 years or more after the originating period ends, none of the interest allowance for the originating period is unexpired in the receiving period.
- (4) Subsection (5) applies if the receiving period—
  - (a) begins more than 5 years after the originating period begins, and
  - (b) ends 5 years or less after the originating period ends.
- (5) The amount of the interest allowance for the originating period that is unexpired in the receiving period is—

$$(A - B) \times X Y$$

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where—

A is the interest allowance for the originating period;

B is—

- (a) the aggregate net tax-interest expense of the group for the originating period, or
- (b) if lower, the interest allowance for the originating period;

X is the number of days in the period—

- (a) beginning with the day on which the receiving period begins, and
- (b) ending with the day 5 years after the day on which the originating period ends;

Y is the number of days in the originating period.

(6) Subsection (7) applies if the receiving period—

- (a) begins 5 years or less after the originating period begins, and
- (b) ends more than 5 years after the originating period ends.

(7) The amount of the interest allowance for the originating period that is unexpired in the receiving period is—

$$(C - D) \times X Z$$

where—

C is the aggregate net tax-interest expense of the group for the receiving period;

D is—

- (a) the interest allowance of the group for the receiving period, or
- (b) if lower, the aggregate net tax-interest expense of the group for the receiving period;

X has the same meaning as in subsection (5);

Z is the number of days in the receiving period.

(8) Subsection (9) applies if—

- (a) the receiving period—
  - (i) begins more than 5 years after the originating period begins, and
  - (ii) ends more than 5 years after the originating period ends, and
- (b) subsection (3) does not apply.

(9) The amount of the interest allowance for the originating period that is unexpired in the receiving period is the lower of the amounts determined under subsections (5) and (7).

### **Carry forward of interest allowance: new holding company**

**I<sub>F253</sub>395A**

(1) This section applies if—

- (a) a company (“C”) ceases to be the ultimate parent of a worldwide group (“the old group”) because of a qualifying takeover, and
- (b) another company (“N”) becomes the ultimate parent of a worldwide group (“the new group”) as a result of the takeover.

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- (2) For this purpose there is a qualifying takeover if there is a change in the ownership of C which is disregarded for the purposes of Chapters 2 to 6 of Part 14 of CTA 2010 as a result of section 724A of that Act where—
  - (a) C is the other company referred to as C in that section, and
  - (b) N is the new company referred to as N in that section.
- (3) For the purposes of this Chapter, the interest allowance of the new group is determined as if periods of account of the old group which ended before the beginning of the first period of account of the new group were periods of account of the new group.]

#### Textual Amendments

**F253** S. 395A inserted (with effect in accordance with Sch. 11 para. 23 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 3](#)

## CHAPTER 5

### INTEREST ALLOWANCE

#### *Interest allowance*

#### **396 The interest allowance of a worldwide group for a period of account**

- (1) For the purposes of this Part “the interest allowance” of a worldwide group for a period of account of the group is—

$$A + B$$

where—

A is the basic interest allowance of the group for the period;

B is the amount (if any) of the aggregate net tax-interest income of the group for the period (see section 390(3) and (4)).

- (2) In subsection (1) “the basic interest allowance” means—
  - (a) where no group ratio election is in force in relation to the period, the basic interest allowance calculated using the fixed ratio method (see section 397);
  - (b) where such an election is in force in relation to the period, the basic interest allowance calculated using the group ratio method (see section 398).

#### **397 Basic interest allowance calculated using fixed ratio method**

- (1) For the purposes of section 396, the basic interest allowance of a worldwide group for a period of account of the group, calculated using the fixed ratio method, is the lower of the following amounts—

- (a) 30% of the aggregate tax-EBITDA of the group for the period;
- (b) the fixed ratio debt cap of the group for the period.

- (2) See—

section 400 for the meaning of “fixed ratio debt cap”;

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section 405 for the meaning of “aggregate tax-EBITDA”.

### **398 Basic interest allowance calculated using group ratio method**

- (1) For the purposes of section 396, the basic interest allowance of a worldwide group for a period of account of the group, calculated using the group ratio method, is the lower of the following amounts—
- (a) the group ratio percentage of the aggregate tax-EBITDA of the group for the period;
  - (b) the group ratio debt cap of the group for the period.
- (2) See—
- section 399 for the meaning of “group ratio percentage”;
  - section 400 for the meaning of “group ratio debt cap”;
  - section 405 for the meaning of “aggregate tax-EBITDA”.

### **399 The group ratio percentage**

- (1) For the purposes of this Part “the group ratio percentage” of a worldwide group for a period of account of the group is (subject to subsection (2)) the following proportion expressed as a percentage—
- $$\frac{A}{B}$$
- where—
- A is the qualifying net group-interest expense of the group for the period;
  - B is the group-EBITDA of the group for the period.
- (2) “The group ratio percentage” is 100% where—
- (a) the percentage determined under subsection (1) is negative or higher than 100%, or
  - (b) B in that subsection is zero.
- (3) See—
- section 414 for the meaning of “qualifying net group-interest expense”;
  - section 416 for the meaning of “group-EBITDA”.

### **400 The debt cap**

- (1) For the purposes of section 397 (and this section), “the fixed ratio debt cap” of a worldwide group for a period of account of the group is the sum of the following amounts—
- (a) the adjusted net group-interest expense of the group for the period;
  - (b) the excess debt cap of the group that was generated in the immediately preceding period of account of the group (if any) (see subsections (3) to (7)).
- (2) For the purposes of section 398 (and this section), “the group ratio debt cap” of a worldwide group for a period of account of the group is the sum of the following amounts—
- (a) the qualifying net group-interest expense of the group for the period;



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- (b) the excess debt cap of the group that was generated in the immediately preceding period of account of the group (if any) (see subsections (3) to (7)).
- (3) Where no group ratio election is in force in relation to a period of account of a worldwide group (“the generating period”), “the excess debt cap” of the group that is generated in the period is (subject to subsections (5) and (6))—

$$A - B$$

where—

A is the fixed ratio debt cap of the group for the generating period;

B is 30% of the aggregate tax-EBITDA of the group for the generating period.

- (4) Where a group ratio election is in force in relation to a period of account of a worldwide group (“the generating period”), “the excess debt cap” of the group that is generated in the period is (subject to subsections (5) and (6))—

$$A - B$$

where—

A is the group ratio debt cap of the group for the generating period;

B is the group ratio percentage of the aggregate tax-EBITDA of the group for the generating period.

- (5) Where the amount determined under subsection (3) or (4) is negative, “the excess debt cap” of the group that is generated in the period is nil.
- (6) Where the amount determined under subsection (3) or (4) is greater than the carry-forward limit, “the excess debt cap” of the group that is generated in the period is the carry-forward limit.

- (7) For this purpose the “carry-forward limit” is the sum of the following amounts—

- (a) the excess debt cap generated in the period of account of the group immediately preceding the generating period (if any);
- (b) the total disallowed amount of the group in the generating period.

- (8) See—

section 373 for the meaning of “the total disallowed amount”;

section 405 for the meaning of “aggregate tax-EBITDA”;

section 413 for the meaning of “adjusted net group-interest expense”;

section 414 for the meaning of “qualifying net group-interest expense”.

#### **Carry forward of excess debt cap: new holding company**

**400A**

- (1) This section applies if—

- (a) a company (“C”) ceases to be the ultimate parent of a worldwide group (“the old group”) because of a qualifying takeover, and
- (b) another company (“N”) becomes the ultimate parent of a worldwide group (“the new group”) as a result of the takeover.

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- (2) For this purpose there is a qualifying takeover if there is a change in the ownership of C which is disregarded for the purposes of Chapters 2 to 6 of Part 14 of CTA 2010 as a result of section 724A of that Act where—
  - (a) C is the other company referred to as C in that section, and
  - (b) N is the new company referred to as N in that section.
- (3) In determining in accordance with section 400 the group's fixed ratio debt cap or group ratio debt cap for its first period of account, its excess debt cap generated in the immediately preceding period of account is taken to be that of the old group for the period of account of the old group ending immediately before the qualifying takeover.]

#### Textual Amendments

**F254** S. 400A inserted (with effect in accordance with Sch. 11 para. 23 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 4](#)

### *Effect of group ratio (blended) election*

#### **401 Effect of group ratio (blended) election on group ratio percentage**

- (1) Where a group ratio (blended) election (see paragraph 14 of Schedule 7A) has effect in relation to a period of account of a worldwide group (“the relevant period of account”), this Chapter applies subject to this section.
- (2) Section 399 (meaning of “group ratio percentage”) does not apply for the purpose of determining the group ratio percentage of the group for the relevant period of account.
- (3) Instead, the group ratio percentage of the group for the relevant period of account is determined by taking the following steps—
  - Step 1* For each investor in the group, multiply the investor's applicable percentage by the investor's share in the group.
  - Step 2* Add together the amounts found under Step 1.
- (4) For the purposes of this section, an investor's “applicable percentage” is the highest of the following percentages—
  - (a) 30%;
  - (b) the percentage determined under section 399;
  - (c) in the case of a related party investor that, throughout the relevant period of account, is a member of a worldwide group (“the investor's worldwide group”) other than that mentioned in subsection (1), the group ratio percentage of the investor's worldwide group for the relevant period of account.
- (5) Subsection (6) applies where financial statements of the investor's worldwide group are drawn up in respect of one or more periods (“the investor's periods of account”) that are comprised in or overlap with (but are not coterminous with) the relevant period of account.
- (6) The group ratio percentage of the investor's worldwide group for the relevant period of account is to be determined for the purposes of subsection (4)(c) by taking the following steps—

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*Step 1* Find the group ratio percentage of the investor's worldwide group for each of the investor's periods of account.

*Step 2* Find the proportion of the relevant period of account that coincides with each of the investor's periods of account.

*Step 3* For each of the investor's periods of account, multiply the group ratio percentage found under Step 1 by the proportion found under Step 2.

*Step 4* Add together the amounts found under Step 3.

#### **402 Effect of group ratio (blended) election on group ratio debt cap**

(1) Where a group ratio (blended) election (see paragraph 14 of Schedule 7A) has effect in relation to a period of account of a worldwide group (“the relevant period of account”), this Chapter applies subject to this section.

(2) In section 400 (the debt cap), subsection (2)(a) is treated as if—

- (a) it did not refer to the qualifying net group-interest expense of the group for the period, and
- (b) instead it referred to the blended net group-interest expense of the group for the period, as determined in accordance with this section.

(3) The blended net group-interest expense of the group for the relevant period of account is determined by taking the following steps—

*Step 1* For each investor in the group whose applicable percentage for the purposes of section 401 is the percentage mentioned in subsection (4)(a) of that section, multiply the adjusted net group-interest expense of the group for the period by the investor's share in the group.

*Step 2* For each investor in the group whose applicable percentage for the purposes of section 401 is the percentage mentioned in subsection (4)(b) of that section, multiply the qualifying net group-interest expense of the group for the period by the investor's share in the group.

*Step 3* For each investor in the group whose applicable percentage for the purposes of section 401 is the percentage mentioned in subsection (4)(c) of that section, find the applicable net group-interest expense of the investor's worldwide group for the period (see subsections (4) to (8) of this section).

*Step 4* Add together the amounts found under Steps 1, 2 and 3.

(4) For the purposes of this section, the “applicable net group-interest expense” of the investor's worldwide group for a period of account is so much of the qualifying net group-interest expense of the investor's worldwide group for the period as relates to loans to, or other financial arrangements with, members of the investor's worldwide group that are used to fund (directly or indirectly) loans to, or other financial arrangements with, members of the worldwide group mentioned in subsection (1).

(5) Subsection (6) applies where periods of account of the investor's worldwide group (“the investor's periods of account”) are comprised in or overlap with (but are not coterminous with) the relevant period of account.

(6) The applicable net group-interest expense of the investor's worldwide group for the relevant period of account is the aggregate of so much of the applicable net group-interest expense of the investor's worldwide group for each of the investor's periods of account as is referable, on a just and reasonable basis, to the relevant period of account.

(7) Subsection (8) applies where—

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- (a) a loan is made to, or another financial arrangement is entered into with, a member of the investor's worldwide group, and
  - (b) the loan or other financial arrangement is—
    - (i) in part used to fund (directly or indirectly) loans to, or other financial arrangements with, members of the worldwide group mentioned in subsection (1), and
    - (ii) in part used for other purposes.
- (8) In determining the applicable net group-interest expense of the investor's worldwide group for any period, the amount of the qualifying net group-interest expense of the investor's worldwide group for the period that is brought into account, in respect of the loan or other financial arrangement mentioned in subsection (7)(a), is confined to such amount as is referable, on a just and reasonable basis, to the use mentioned in subsection (7)(b)(i).
- (9) In this section—
- “financial arrangements” does not include the holding of shares;
  - “the investor's worldwide group” has the same meaning as in section 401.

#### **403 Calculations under sections 401 and 402: investor worldwide groups**

- (1) This section applies—
- (a) in determining, under section 401, the group ratio percentage of the investor's worldwide group for a period of account;
  - (b) in determining, under section 402, the qualifying net group-interest expense of the investor's worldwide group for a period of account.
- (2) Where the group ratio (blended) election specifies that a particular election under Schedule 7A (“the investor's election”) is to be treated as having effect, or as not having effect, in relation to periods of account of the investor's worldwide group, the investor's election is to be so treated in determining the amounts mentioned in subsection (1).
- (3) Where the group ratio (blended) election does not specify that a particular election under Schedule 7A (“the investor's election”) is to be treated as having effect, or as not having effect, in relation to periods of account of the investor's worldwide group, the investor's election is to be treated as having effect in determining the amounts mentioned in subsection (1) only if it was in fact made in relation to the period of account in question by a reporting company of the investor's worldwide group.
- (4) In this section “the investor's worldwide group” has the same meaning as in section 401.

#### **404 Meaning of “investor”, “related party investor” and investor's “share”**

- (1) An entity is an “investor” in a worldwide group if it has an interest in the ultimate parent of the group that entitles it to a proportion of the profits or losses of the group.
- (2) An investor in a worldwide group is a “related party investor” of the group in relation to a period of account of the group if, throughout the period, it is a related party of the ultimate parent of the group.
- (3) The “share” of an investor in a worldwide group, in relation to a period of account of the group, is the proportion (expressed as a percentage) of the profits or losses of the

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group that arise in the period to which the investor is entitled by virtue of the investor's interest in the group's ultimate parent.

(4) This section has effect for the purposes of this Part.

## CHAPTER 6

### TAX-EBITDA

#### 405 The aggregate tax-EBITDA of a worldwide group

For the purposes of this Part “the aggregate tax-EBITDA” of a worldwide group for a period of account of the group is—

- (a) the total of the tax-EBITDAs for the period of each company that was a member of the group at any time during the period, or
- (b) where the amount specified in paragraph (a) is negative, nil.

#### 406 The tax-EBITDA of a company

(1) For the purposes of this Part the “tax-EBITDA” of a company for a period of account of the worldwide group is—

- (a) where the company has only one relevant accounting period, the company's adjusted corporation tax earnings for that accounting period;
- (b) where the company has more than one relevant accounting period, the total of the company's adjusted corporation tax earnings for each of those accounting periods.

(2) The company's “adjusted corporation tax earnings” for an accounting period is the total (which may be negative) of the amounts that meet condition A or B.

(3) Condition A is that the amount—

- (a) is brought into account by the company in determining its taxable total profits of the period (within the meaning given by section 4(2) of CTA 2010), and
- (b) is not an excluded amount for the purposes of this condition (see section 407).

(4) Condition B is that the amount—

- (a) is not brought into account as mentioned in subsection (3)(a), but would have been so brought into account if the company had made profits, or more profits, of any description in the period, and
- (b) is not an excluded amount for the purposes of this condition (see section 407).

(5) Subsection (7) applies if an amount—

- (a) is brought into account as mentioned in subsection (3)(a), or
- (b) is not brought into account as mentioned in subsection (4)(a),

in an accounting period which contains one or more disregarded periods.

(6) A “disregarded period” is any period falling within the accounting period—

- (a) which does not fall within the period of account of the worldwide group, or
- (b) throughout which the company is not a member of the group.

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- (7) Where this subsection applies, the amount mentioned in subsection (5) is reduced, for the purposes of subsection (2), by such amount (if any) as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in subsection (5).
- (8) An amount may be reduced to nil under subsection (7).

#### **407 Amounts not brought into account in determining a company's tax-EBITDA**

- (1) An amount is an excluded amount for the purposes of conditions A and B in section 406 if it is any of the following—
- (a) a tax-interest expense amount or a tax-interest income amount;
  - (b) an allowance or charge under CAA 2001;
  - (c) an excluded relevant intangibles debit or an excluded relevant intangibles credit (see section 408);
  - (d) a loss that—
    - (i) is made by the company in an accounting period other than that mentioned in section 406(2), and
    - (ii) is not an allowable loss for the purposes of TCGA 1992;
  - (e) a deficit from the company's loan relationships for an accounting period other than that mentioned in section 406(2);
  - (f) expenses of management of the company that are referable to an accounting period other than that mentioned in section 406(2);
  - (g) a deduction under section 137 of CTA 2010 (group relief) or section 188CK of that Act (group relief for carried-forward losses) if and to the extent that it constitutes a loss of the worldwide group;
  - (h) a qualifying tax relief.
- (2) For the purposes of subsection (1)(g) the deduction constitutes a “loss of the worldwide group” if and to the extent that it comprises surrenderable amounts that are referable to times at which the surrendering company was a member of the worldwide group.
- (3) An amount is a qualifying tax relief for the purposes of subsection (1)(h) if it is any of the following—
- (a) an R&D expenditure credit within the meaning of section 104A of CTA 2009;
  - (b) a deduction under section 1044, 1063, 1068 or 1087 of CTA 2009 (additional relief for expenditure on research and development);
  - (c) an amount which is treated as a trading loss as a result of section 1092 of CTA 2009 (SMEs: deemed trading loss for pre-trading expenditure);
  - (d) a deduction under section 1147 or 1149 of CTA 2009 (relief for expenditure on contaminated or derelict land);
  - (e) a deduction under section 1199 of CTA 2009 (film tax relief);
  - (f) a deduction under section 1216CF of CTA 2009 (television tax relief);
  - (g) a deduction under section 1217CF of CTA 2009 (video games tax relief);
  - (h) a deduction under section 1217H of CTA 2009 (relief in relation to theatrical productions);
  - (i) a deduction under section 1217RD of CTA 2009 (orchestra tax relief);
  - (j) a deduction under section 1218ZCE of CTA 2009 (museums and galleries exhibition tax relief);

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- (k) a qualifying charitable donation (whether made in the accounting period mentioned in section 406(2) or an earlier one);
  - (l) a deduction under section 357A of CTA 2010 (profits from patents etc chargeable at lower rate of corporation tax).
- (4) An amount is an excluded amount for the purposes of condition B in section 406 if it is an allowable loss for the purposes of TCGA 1992.

#### **408 Excluded relevant intangibles debits and excluded relevant intangibles credits**

- (1) For the purposes of section 407 (and this section)—
- (a) a debit is a “relevant intangibles debit” if it is brought into account under a provision of Part 8 of CTA 2009 (intangible fixed assets) that is listed in column 1 of the following table;
  - (b) a relevant intangibles debit is “excluded” to the extent indicated in the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>Excluded debits</i>
section 729	excluded in full
section 731	excluded in full
section 732	excluded if and to the extent that its amount is determined by reference to an excluded intangibles credit
section 735	excluded in full
section 736	excluded in full
section 872	excluded in full
section 874	excluded in full

- (2) For the purposes of section 407 (and this section)—
- (a) a credit is a “relevant intangibles credit” if it is brought into account under a provision of Part 8 of CTA 2009 (intangible fixed assets) that is listed in column 1 of the following table;
  - (b) a relevant intangibles credit is “excluded” to the extent indicated in the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>Excluded credits</i>
section 723	excluded if and to the extent that its amount is determined by reference to excluded intangible debits and excluded intangible credits
section 725	excluded if and to the extent that its amount is determined by reference to an excluded intangibles debit
section 735	excluded if and to the extent that the cost of the asset in question exceeds its tax written-down value
section 872	excluded in full
section 874	excluded in full

- (3) In the table in subsection (2)—

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- (a) “tax written-down value” has the same meaning as in Part 8 of CTA 2009 (see Chapter 5 of that Part);
- (b) “the cost of the asset” has the same meaning as in section 736 of that Act.

#### 409 Double taxation relief

- (1) This section applies where—
  - (a) apart from this section, an amount of income (“the relevant amount”) would meet condition A or B in section 406 in relation to a relevant accounting period of a company, and
  - (b) the amount of corporation tax chargeable in respect of the relevant amount is reduced under section 18(2) (entitlement to credit for foreign tax reduces UK tax by amount of the credit).
- (2) The relevant amount is treated, for the purposes of section 406(2) (meaning of “adjusted corporation tax earnings”) as not meeting the condition mentioned in subsection (1)(a) to the extent that it consists of notional untaxed income.
- (3) For this purpose, the amount of the relevant amount that consists of “notional untaxed income” is—

A B

where—

A is the amount of the reduction mentioned in subsection (1)(b);

B is the rate of corporation tax payable by the company, before any credit under Part 2 (double taxation relief), on the company's profits for the relevant accounting period.

## CHAPTER 7

### GROUP-INTEREST AND GROUP-EBITDA

#### *Group-interest*

#### 410 Net group-interest expense

- (1) For the purposes of this Part the “net group-interest expense” of a worldwide group for a period of account of the group (“the relevant period of account”) is—

A – B

where—

A is the sum of the relevant expense amounts that are recognised in the financial statements of the group for the period as items of profit or loss;

B is the sum of the relevant income amounts that are recognised in the financial statements of the group for the period as items of profit or loss.

- (2) Subsection (3) applies where—



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- (a) a relevant expense amount (“the capitalised expense”) is brought into account in financial statements of the group (whether for the relevant period of account or any earlier period) in determining the carrying value of an asset,
  - (b) the asset is not a relevant asset, and
  - (c) in the financial statements of the group for the relevant period of account, any of the carrying value is written down.
- (3) A in subsection (1) is treated as including so much of the amount written down as is attributable to the capitalised expense.
- (4) Subsection (5) applies where—
- (a) a relevant income amount (“the capitalised income”) is brought into account in financial statements of the group (whether for the relevant period of account or any earlier period) in determining the carrying value of an asset,
  - (b) the asset is not a relevant asset, and
  - (c) in the financial statements of the group for the relevant period of account, any of the carrying value is written down.
- (5) B in subsection (1) is treated as including the amount of the reduction in the amount written down that is attributable to the capitalised income.

[ If, on the assumption that subsections (3) and (5) applied to relevant assets, an amount <sup>F255</sup>(5A) would, in accordance with subsection (3) or (5), have been treated as included in A or B in subsection (1)—

- (a) as an amount attributable to the capitalised expense, or
- (b) as an amount attributable to the capitalised income,

none of that amount is to be included in A or B in that subsection.]

- (6) See—
- section 411 for the definitions of “relevant expense amount” and “relevant income amount”;
  - section 417(5) and (6) for the definition of “relevant asset”;
  - section 420 for provision affecting amounts recognised in financial statements in respect of certain profits or losses arising from derivative contracts.

#### **Textual Amendments**

**F255** S. 410(5A) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 5](#)

### **411 “Relevant expense amount” and “relevant income amount”**

- (1) In this Chapter “relevant expense amount” means (subject to subsection (3)) an amount in respect of any of the following—
- (a) interest payable under a loan relationship;
  - (b) expenses ancillary to a loan relationship [<sup>F256</sup>or related transaction];
  - (c) losses arising from a loan relationship or a related transaction, other than—
    - (i) exchange losses, and
    - (ii) impairment losses;

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- (d) dividends payable in respect of preference shares accounted for as a financial liability;
  - (e) losses arising from a relevant derivative contract or a related transaction, other than—
    - (i) exchanges losses,
    - (ii) impairment losses, and
    - [<sup>F257</sup>(iii) losses in respect of risks arising in the ordinary course of a trade (other than risks arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group);]
  - (f) expenses ancillary to a relevant derivative contract or related transaction;
  - (g) financing charges implicit in payments made under a finance lease;
  - (h) financing charges relating to debt factoring [<sup>F258</sup>or any similar transaction];
  - (i) financing charges implicit in payments made under a service concession arrangement if and to the extent that the arrangement is accounted for as a financial liability;
  - (j) interest payable in respect of a relevant non-lending relationship;
  - (k) alternative finance return payable under alternative finance arrangements;
  - (l) manufactured interest payable;
  - (m) financing charges in respect of the advance under a debtor repo or debtor quasi-repo;
  - (n) financing charges so far as they are made up of amounts which—
    - (i) are treated as interest payable under a loan relationship under a relevant provision of Chapter 2 of Part 16 of CTA 2010 (finance arrangements), or
    - (ii) would be so treated if the company in question were within the charge to corporation tax.
- (2) In this Chapter “relevant income amount” means (subject to subsection (3)) an amount in respect of any of the following—
- (a) interest receivable under a loan relationship;
  - (b) profits arising from a loan relationship or a related transaction, other than—
    - (i) exchange gains, and
    - (ii) the reversal of impairment losses;
  - (c) dividends receivable in respect of preference shares accounted for as a financial asset;
  - (d) gains arising from a relevant derivative contract or a related transaction, other than—
    - (i) exchange gains,
    - (ii) the reversal of impairment losses, and
    - [<sup>F259</sup>(iii) gains in respect of risks arising in the ordinary course of a trade (other than risks arising in the ordinary course of a financial trade) where the derivative contract was entered into wholly for reasons unrelated to the capital structure of the worldwide group (or any member of the worldwide group);]
  - (e) financing income implicit in amounts received under a finance lease;
  - (f) financing income relating to debt factoring [<sup>F260</sup>or any similar transaction];

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- (g) financing income implicit in amounts received under a service concession arrangement if and to the extent that the arrangement is accounted for as a financial asset;
  - (h) interest receivable in respect of a relevant non-lending relationship;
  - (i) alternative finance return receivable under alternative finance arrangements;
  - (j) manufactured interest receivable;
  - (k) financing income in respect of the advance under a creditor repo or creditor quasi-repo;
  - (l) financing income so far as it is made up of amounts which—
    - (i) are treated as interest receivable under a loan relationship under a relevant provision of Chapter 2 of Part 16 of CTA 2010 (finance arrangements), or
    - (ii) would be so treated if the company in question were within the charge to corporation tax.
- (3) In this Chapter—
- (a) “relevant expense amount” does not include an amount payable under a pension scheme;
  - (b) “relevant income amount” does not include an amount receivable under a pension scheme.

<sup>F261</sup>(4) . . . . .

#### Textual Amendments

- F256** Words in s. 411(1)(b) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 20\(2\)\(a\), 23\(1\)](#)
- F257** S. 411(1)(e)(iii) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 4\(2\)](#)
- F258** Words in s. 411(1)(h) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 20\(2\)\(b\), 23\(1\)](#)
- F259** S. 411(2)(d)(iii) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 4\(3\)](#)
- F260** Words in s. 411(2)(f) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 20\(3\), 23\(1\)](#)
- F261** S. 411(4) omitted (retrospectively) by virtue of [Finance Act 2019 \(c. 1\)](#), [Sch. 11 paras. 19, 24](#)

## 412 Section 411: interpretation

- (1) For the purposes of section 411(1)(b), expenses are “ancillary” to a loan relationship [<sup>F262</sup>or related transaction] if and only if they are incurred directly—
- (a) in bringing, or attempting to bring, the relationship into existence,  
[ in entering into or giving effect to, or attempting to enter into or give effect to, the related transaction,]  
<sup>F263</sup>(ab)
  - (b) in making payments under the loan relationship [<sup>F264</sup>or as a result of the related transaction], or
  - (c) in taking steps to ensure the receipt of payments under the loan relationship [<sup>F265</sup>or in accordance with the related transaction].
- (2) For the purposes of section 411(1)(e) and (2)(d) a derivative contract is “relevant” if its underlying subject matter consists only of one or more of the following—

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- (a) interest rates;
  - (b) any index determined by reference to income or retail prices;
  - (c) currency;
  - (d) an asset or liability representing a loan relationship;
  - (e) any other underlying subject matter which is—
    - (i) subordinate in relation to any of the matters mentioned in paragraphs (a) to (d), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (3) Whether part of the underlying subject matter of a derivative contract is subordinate or of small value is to be determined for the purposes of subsection (2)(e) by reference to the time when the company enters into or acquires the contract.
- [ For the purposes of section 411(1)(e)(iii) and (2)(d)(iii) losses or gains are in respect
- <sup>F266</sup>(3A) of risks arising in the ordinary course of “a financial trade” only so far as the risks relate to amounts which are or are likely to be—
- (a) relevant expense amounts, or
  - (b) relevant income amounts,
- of the worldwide group for any period of account.]
- (4) For the purposes of section 411(1)(f) expenses are “ancillary” to a relevant derivative contract or related transaction if and only if they are incurred directly—
- (a) in bringing, or attempting to bring, the derivative contract into existence,
  - (b) in entering into or giving effect to, or attempting to enter into or give effect to, the related transaction,
  - (c) in making payments under the derivative contract or as a result of the related transaction, or
  - (d) in taking steps to secure the receipt of payments under the derivative contract or in accordance with the related transaction.
- (5) For the purposes of section 411(1)(n) and (2)(l), the following provisions of Chapter 2 of Part 16 of CTA 2010 are “relevant”—
- (a) section 761(3) (type 1 finance arrangements: borrower a company);
  - (b) section 762(3) (type 1 finance arrangements: borrower a partnership);
  - (c) section 766(3) (type 2 finance arrangements);
  - (d) section 769(3) (type 3 finance arrangements).
- (6) In section 411—
- (a) in subsections [<sup>F267</sup>(1)(b) and (c)] and (2)(b), “related transaction”, “exchange loss” and “exchange gain” have the same meaning as in Parts 5 and 6 of CTA 2009 (see sections 304 and 475 of that Act);
  - (b) in subsections [<sup>F268</sup>(1)(e) and (f)] and (2)(d), “related transaction”, “exchange loss” and “exchange gain” have the same meaning as in Part 7 of that Act (see sections 596 and 705 of that Act).
- (7) In section 411 and this section—
- “alternative finance arrangements” has the same meaning as in Parts 5 and 6 of CTA 2009 (see section 501(2) of that Act);
  - “alternative finance return” has the same meaning as in Part 6 of CTA 2009 (see sections 511 to 513 of that Act);

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“creditor quasi-repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 544 of that Act);

“creditor repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 543 of that Act);

“debtor quasi-repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 549 of that Act);

“debtor repo” has the same meaning as in Chapter 10 of Part 6 of CTA 2009 (see section 548 of that Act);

“manufactured interest” has the same meaning as in Chapter 9 of Part 6 of CTA 2009 (see section 539(5) of that Act);

“relevant non-lending relationship” has the same meaning as in Chapter 2 of Part 6 of CTA 2009 (see sections 479 and 480 of that Act);

“underlying subject matter” has the same meaning as in Part 7 of CTA 2009 (see section 583 of that Act).

#### Textual Amendments

**F262** Words in s. 412(1) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 21\(2\)\(a\)](#), 23(1)

**F263** S. 412(1)(ab) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 21\(2\)\(b\)](#), 23(1)

**F264** Words in s. 412(1)(b) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 21\(2\)\(c\)](#), 23(1)

**F265** Words in s. 412(1)(c) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 21\(2\)\(d\)](#), 23(1)

**F266** S. 412(3A) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 5](#)

**F267** Words in s. 412(6)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 21\(3\)\(a\)](#), 23(1)

**F268** Words in s. 412(6)(b) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 21\(3\)\(b\)](#), 23(1)

### 413 Adjusted net group-interest expense

- (1) For the purposes of this Part the “adjusted net group-interest expense” of a worldwide group for a period of account of the group is (subject to subsection (2))—

$$A + B - C$$

where—

A is the net group-interest expense of the group for the period (see section 410);

B is the sum of any upward adjustments (see subsection (3));

C is the sum of any downward adjustments (see subsection (4)).

- (2) Where the amount determined under subsection (1) is negative, the “adjusted net group-interest expense” of the group for the period is nil.

- (3) In this section “upward adjustment” means any of the following amounts—

- (a) a relevant expense amount that is brought into account in the financial statements of the group for the period in determining the carrying value of <sup>[F269]</sup>a non-financial asset or non-financial liability];

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- (b) an amount that [<sup>F270</sup>, in the case of a non-financial asset,] is included in the net group-interest expense of the group for the period by virtue of section 410(5) (capitalised income written off);
  - (c) a relevant expense amount that—
    - (i) in the financial statements of the group for the period is recognised in equity or shareholders' funds, and is not recognised as an item of profit or loss or as an item of other comprehensive income, and
    - (ii) is brought into account for the purposes of corporation tax by a member of the group under a relevant enactment, or would be so brought into account if the member were within the charge to corporation tax;
  - (d) a relevant income amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, so far as it—
    - (i) is prevented from being brought into account for the purposes of corporation tax by a member of the group by section 322(2) [<sup>F271</sup>, 323A, 358 or 359] of CTA 2009 <sup>F272</sup> ..., or
    - (ii) would be so prevented if the member were within the charge to corporation tax.
- (4) In this section “downward adjustment” means any of the following amounts—
- (a) a relevant income amount that is brought into account in the financial statements of the group for the period in determining the carrying value of [<sup>F273</sup> a non-financial asset or non-financial liability];
  - (b) an amount that [<sup>F274</sup>, in the case of a non-financial asset,] is included in the net group-interest expense of the group for the period by virtue of section 410(3) (capitalised expense written off);
  - (c) a relevant income amount that—
    - (i) in the financial statements of the group for the period is recognised in equity or shareholders' funds, and is not recognised as an item of profit or loss or as an item of other comprehensive income, and
    - (ii) is brought into account for the purposes of corporation tax by a member of the group under a relevant enactment, or would be so brought into account if the member were within the charge to corporation tax;
  - (d) a relevant expense amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, so far as it—
    - (i) is prevented from being brought into account for the purposes of corporation tax by a member of the group by section 323A [<sup>F275</sup> or 354] of CTA 2009 <sup>F276</sup> ..., or
    - (ii) would so prevented if the member were within the charge to corporation tax;
  - (e) a relevant expense amount that is recognised in the financial statements of the group for the period, as an item of profit or loss, so far as—
    - (i) the amount represents a dividend payable in respect of preference shares, and
    - (ii) those shares are recognised as a liability in the financial statements of the group for the period.

[<sup>F277</sup>(5) For the purposes of subsections (3)(a) and (b) and (4)(a) and (b)—

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- (a) an asset is a “non-financial asset” if it is not a financial asset for accounting purposes or it is a share in a company,
- (b) a liability is a “non-financial liability” if it is not a financial liability for accounting purposes or it is in respect of a share issued by a company, and
- (c) references to amounts brought into account in determining the carrying value of a non-financial asset or non-financial liability do not include amounts so brought into account as a result of writing off any part of an amount which was itself so brought into account;

and in paragraphs (a) and (b) “share” has the meaning given by section 476(1) of CTA 2009.]

- (6) In subsections (3)(c)(ii) and (4)(c)(ii), “relevant enactment” means—
  - (a) section 321 or 605 of CTA 2009 (credits and debits recognised in equity), or
  - [<sup>F278</sup>(b) section 320B of CTA 2009 (hybrid capital instruments: amounts recognised in equity).]

#### Textual Amendments

- F269** Words in s. 413(3)(a) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 6\(2\)\(a\)](#)
- F270** Words in s. 413(3)(b) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 6\(2\)\(b\)](#)
- F271** Words in s. 413(3)(d)(i) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 8\(2\)\(a\)](#)
- F272** Words in s. 413(3)(d)(i) omitted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by virtue of [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 8\(2\)\(b\)](#)
- F273** Words in s. 413(4)(a) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 6\(3\)\(a\)](#)
- F274** Words in s. 413(4)(b) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 6\(3\)\(b\)](#)
- F275** Words in s. 413(4)(d)(i) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 8\(3\)\(a\)](#)
- F276** Words in s. 413(4)(d)(i) omitted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by virtue of [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 8\(3\)\(b\)](#)
- F277** S. 413(5) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 6\(4\)](#)
- F278** S. 413(6)(b) substituted (with effect in accordance with Sch. 20 para. 10(b) of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 20 para. 8\(2\)](#)

#### 414 Qualifying net group-interest expense

- (1) For the purposes of this Part the “qualifying net group-interest expense” of a worldwide group for a period of account of the group is (subject to subsection (2))—

$$A - B$$

where

A is the adjusted net group-interest expense of the group for the period (see section 413);

B is the sum of any downward adjustments (see subsection (3)).

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- (2) Where the amount determined under subsection (1) is negative, “the qualifying net group-interest expense” of the group for the period is nil.
- (3) In this section “downward adjustment” means a relevant expense amount that meets the condition in subsection (4), so far as it relates to—
- (a) a transaction with, or a financial liability owed to, a person who, at any time during the period, is a related party of a member of the group,
  - (b) results-dependent securities, or
  - (c) equity notes.
- (4) The condition mentioned in subsection (3) is that the amount—
- (a) is recognised in the financial statements of the group for the period, as an item of profit and loss, and is not (and is not comprised in) a downward adjustment for the purposes of section 413 (adjusted net group-interest expense), or
  - (b) is (or is comprised in) an upward adjustment for the purposes of that section.
- (5) In a case where—
- (a) the person mentioned in subsection (3)(a) is not a related party of a member of the group during any part of the period of account, or
  - (b) during any part of the period of account, the financial liability mentioned in subsection (3)(a) is owed to a person who is not a related party of a member of the group,
- the amount of the downward adjustment under subsection (3)(a) is to be reduced by such amount (if any) as is attributable, on a just and reasonable basis, to that part.

**Modifications etc. (not altering text)**

- C47** S. 414(3)(b) excluded by S.I. 2006/3296, reg. 22(2) (as inserted (29.12.2017) by [The Corporate Interest Restriction \(Consequential Amendments\) Regulations 2017 \(S.I. 2017/1227\)](#), regs. 1, **3(2)**)
- C48** S. 414(3)(b) excluded by S.I. 2007/3402, reg. 12 (as inserted (29.12.2017) by [The Corporate Interest Restriction \(Consequential Amendments\) Regulations 2017 \(S.I. 2017/1227\)](#), regs. 1, **4(2)**)

**415 Section 414: interpretation**

- (1) For the purposes of section 414 a person is treated as not being a related party of a member of the group at any time (“the relevant time”) if at the relevant time—
- (a) the person would (apart from this subsection) be a related party of the member by virtue only of section 466(2) (parties to loan relationship treated as related parties by virtue of financial assistance provided by a related party), and
  - (b) any of the following conditions is met in relation to the guarantee, indemnity or other financial assistance in question.
- (2) The conditions are—
- (a) that the financial assistance is provided before 1 April 2017;
  - (b) that the financial assistance is provided by a member of the group;
  - (c) that the financial assistance relates only to an undertaking in relation to—
    - (i) shares in the ultimate parent of the group, or
    - (ii) loans to a member of the group;
  - (d) that the financial assistance is a non-financial guarantee.



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- (3) Financial assistance is “a non-financial guarantee” if—
- (a) it guarantees the performance by any person of contractual obligations to provide goods or services to a member of the group,
  - (b) it is given by the person providing the goods or services or by a related party of that person, and
  - (c) the maximum amount for which the guarantor is liable does not exceed the consideration given under the contract for the provision of the goods or services.
- (4) The reference in section 414(3)(b) to “results-dependent securities” is (subject to subsection (8)) to securities issued by an entity where the consideration given by the entity for the use of the principal secured depends (to any extent) on—
- (a) the results of the entity's business, or
  - (b) the results of the business of any other entity that was a member of the group at any time during the period of account of the group.

In this subsection references to a business include part of a business.

- (5) For the purposes of subsection (4) the consideration given by the entity for the use of the principal secured does not fall within paragraph (a) or (b) of that subsection merely because the terms of the security provide—
- (a) for the consideration to be reduced if the results mentioned in that paragraph improve, or
  - (b) for the consideration to be increased if the results mentioned in that paragraph deteriorate.
- (6) An amount does not fall within section 414(3)(b) so far as it is relevant alternative finance return (within the meaning given by section 1019(2) of CTA 2010).
- (7) The reference in section 414(3)(c) to “equity notes” is (subject to subsection (8)) to equity notes within the meaning given by section 1016 of CTA 2010.

<sup>F279</sup>(8) .....

**Textual Amendments**

**F279** S. 415(8) omitted (with effect in accordance with Sch. 20 para. 10(b) of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 20 para. 8(3)**

*Group-EBITDA*

**416 Group-EBITDA**

- (1) For the purposes of this Part “the group-EBITDA” of a worldwide group for a period of account of the group (“the relevant period of account”) is—

$$\text{PBT} + \text{I} + \text{DA}$$

where—

PBT is the group's profit before tax (which may be a negative amount) (see subsection (2));

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I is the net group-interest expense of the group for the period (which may be a negative amount) (see section 410);

DA is the group's depreciation and amortisation adjustment (which may be a negative amount) (see subsection (3)).

- (2) For the purposes of this Chapter a worldwide group's "profit before tax" is—
- (a) the sum of the amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, in respect of income of any description other than tax income, less
  - (b) the sum of the amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, in respect of expenses of any description other than tax expense.

In this subsection "tax income" and "tax expense" have the meaning they have for accounting purposes.

[ An amount is not to be taken into account in calculating a worldwide group's profit before tax for the purposes of subsection (2) if it is, or relates to, an R&D expenditure credit within the meaning of section 104A of CTA 2009.]

- (3) In this section the group's "depreciation and amortisation adjustment" means the sum of the following amounts (any of which may be negative)—
- (a) the capital (expenditure) adjustment (see section 417);
  - (b) the capital (fair value movement) adjustment (see section 418);
  - (c) the capital (disposals) adjustment (see section 419).
- (4) The following expressions have the same meaning in sections 417 to 419 as they have in this section—
- "the relevant period of account";
- "the group's profit before tax".
- (5) For provision affecting amounts recognised in financial statements in respect of certain profits or losses arising from derivative contracts, see section 420.

#### Textual Amendments

**F280** S. 416(2A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 6, 23\(1\)](#)

### 417 The capital (expenditure) adjustment

- (1) For the purposes of section 416, "the capital (expenditure) adjustment" is—

$$A - B - C$$

where—

A is the sum of the amounts (if any) in respect of relevant capital expenditure which are brought into account in determining the group's profit before tax;

B is the sum of the amounts (if any) in respect of relevant capital expenditure reversals which are brought into account in determining the group's profit before tax;

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C is the sum of the amounts (if any) in respect of relevant capital income which are brought into account in determining the group's profit before tax.

- (2) In this section “relevant capital expenditure” means—
- (a) expenditure of a capital nature that relates to relevant assets (including any relevant expense amounts previously included in the carrying value of relevant assets) that is recognised in the relevant period of account by way of depreciation or amortisation, or as the result of an impairment review,
  - (b) expenditure of a capital nature that relates to relevant assets that is incurred and recognised in the relevant period of account, and
  - (c) amounts recognised in the relevant period of account by way of provision in respect of future expenditure of a capital nature that relates to relevant assets.
- (3) In this section “relevant capital expenditure reversals” means the reversal in the relevant period of account of any relevant capital expenditure recognised in an earlier period of account.
- (4) In this section “relevant capital income” means income of a capital nature that relates to relevant assets.
- (5) In this Chapter “relevant asset” means an asset that is—
- (a) plant, property and equipment,
  - (b) an investment property,
  - (c) an intangible asset,
  - (d) goodwill,
  - (e) shares in a company, or
  - (f) an interest in an entity which entitles the holder to a share of the profits of the entity.
- (6) In subsection (5)—
- (a) “plant, property and equipment” has the meaning it has for accounting purposes;
  - (b) “investment property” has the meaning it has for accounting purposes;
  - (c) “intangible asset” has the meaning it has for accounting purposes (and includes an internally-generated intangible asset);
  - (d) “goodwill” has the meaning it has for accounting purposes (and includes internally-generated goodwill);
  - (e) “entity” includes anything which is treated as an entity in the financial statements of the group (regardless of whether it has a legal personality as a body corporate).

Section 712(2) and (3) of CTA 2009 (“intangible asset” includes intellectual property) applies for the purposes of paragraph (c).

- (7) An amount does not fall within A in subsection (1) if it is brought into account in determining a profit or loss on the disposal of a relevant asset.

#### **418 The capital (fair value movement) adjustment**

- (1) In section 416, “the capital (fair value movement) adjustment” means the sum of any relevant fair value movements.

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- (2) For the purposes of subsection (1) there is a “relevant fair value movement” where—
  - (a) the carrying value of a relevant asset is measured, for the purposes of the financial statements of the group, using fair value accounting, and
  - (b) an amount representing a change in the carrying value of the asset is brought into account in determining the group's profit before tax.
- (3) The amount of the relevant fair value movement is the amount of the change mentioned in subsection (2)(b) and—
  - (a) is a positive amount where the change is a loss;
  - (b) is a negative amount where the change is a profit.
- (4) References in this section to a change in the carrying value of a relevant asset do not include a change where the amount brought into account in respect of the change as mentioned in subsection (2)(b) is of a revenue nature.

#### **419 The capital (disposals) adjustment**

- (1) For the purposes of section 416, “the capital (disposals) adjustment” is—

$$A - B + C$$

where—

A is the sum of the amounts (if any) that are brought into account in determining the group's profit before tax and that represent losses on disposals of relevant assets;

B is the sum of the amounts (if any) that are brought into account in determining the group's profit before tax and that represent profits on disposals of relevant assets;

C is the sum of any recalculated profit amounts (see subsections (2) to (8)).

- (2) For the purposes of the definition of C in subsection (1) there is a “recalculated profit amount” where the following two conditions are met.
- (3) The first condition is that an amount is brought into account in determining the group's profit before tax in respect of a profit or loss on the disposal of a relevant asset.
- (4) The second condition is that—
  - (a) the relevant proceeds, exceeds
  - (b) the relevant cost.
- (5) The amount of the recalculated profit amount is the amount of the excess mentioned in subsection (4).
- (6) In this section “the relevant proceeds” means the amount of income of a capital nature that is brought into account in determining the profit or loss mentioned in subsection (3).
- (7) In this section “the relevant cost” means (subject to subsection (8)) the amount of expenditure of a capital nature that is brought into account in determining the profit or loss mentioned in subsection (3).
- (8) For the purposes of subsection (7), any adjustment made to the amount brought into account as mentioned in that subsection is to be disregarded where the adjustment is in respect of amounts that—

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- (a) are otherwise recognised, in the financial statements of the group for the relevant period of account, as items of profit or loss, or
  - (b) were so recognised in the financial statements of the group for an earlier period.
- (9) References in this section to a relevant asset include part of a relevant asset.
- (10) References in this section to the disposal of a relevant asset do not include a disposal where the profit or loss (if any) on the disposal is of a revenue nature.
- (11) The condition in subsection (3) is met even if no amount is brought into account as mentioned in that subsection if that is because no gain or loss accrued on the disposal; and subsections (6) to (8) apply accordingly.

*Treatment of derivative contracts in financial statements of worldwide group*

**420 Derivative contracts subject to fair value accounting**

- (1) This section makes provision about the amounts recognised in a worldwide group's financial statements for a period of account (“the relevant period of account”) in respect of derivative contracts.
- (2) Subsection (3) applies where one or more excluded derivative contract amounts are recognised in the group's financial statements for the relevant period of account as items of profit or loss.
- (3) The financial statements are treated for the purposes of this Part (apart from this section) as if the excluded derivative contract amounts were not recognised in the group's financial statements for the relevant period of account.
- (4) In subsections (2) and (3) “excluded derivative contract amount” means an amount which would, on the relevant assumptions, be excluded from section 597(1) of CTA 2009 (amounts recognised in determining a company's profit or loss) as a result of a relevant provision of the Disregard Regulations.
- (5) Subsection (6) applies where, on the relevant assumptions, one or more amounts (“replacement derivative contract amounts”) would be brought into account by members of the group for the purposes of corporation tax in relevant accounting periods as a result of regulation 9 or 10 of the Disregard Regulations.
- (6) The financial statements are treated for the purposes of this Part (apart from this section) as if the replacement derivative contract amounts were recognised in the group's financial statements for the relevant period of account.
- (7) Subsection (9) applies if an accounting period in which a replacement derivative contract amount would, on the relevant assumptions, be brought into account for the purposes of corporation tax contains one or more disregarded periods.
- (8) A “disregarded period” is any period falling within the accounting period—
  - (a) which does not fall within the relevant period of account, or
  - (b) throughout which the company is not a member of the group.
- (9) Where this subsection applies, the replacement derivative contract amount mentioned in subsection (7) is reduced by such amount as is referable, on a just and reasonable basis, to the disregarded period or periods mentioned in that subsection.

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(10) An amount may be reduced to nil under subsection (9).

#### **421 Derivative contracts subject to fair value accounting: interpretation**

- (1) In section 420 “the relevant assumptions” means the following assumptions—
- (a) that all members of the group are within the charge to corporation tax;
  - (b) that elections under regulation 6A of the Disregard Regulations have effect in relation to each derivative contract of each member of the group;
  - (c) that paragraph (5) of regulation 7 of the Disregard Regulations is of no effect;
  - (d) that where—
    - (i) a member of the group (“member A”) holds a derivative contract,
    - (ii) the group has a hedging relationship between that derivative contract (on the one hand), and an asset, liability, receipt or expense (on the other), and
    - (iii) the asset, liability, receipt or expense is held, or is expected to be received or incurred, by a member of the group other than member A,
 the asset, liability, receipt or expense is held, or is expected to be received or incurred, by member A;
  - (e) that the financial statements of members of the group deal with derivative contracts and hedged items in the same way as they are dealt with in the group's financial statements.
- (2) For the purposes of subsection (1)(d) the group has a “hedging relationship” between a derivative contract (on the one hand) and an asset, liability, receipt or expense (on the other) if, were those things held, received or incurred by a single company, the company would have a hedging relationship between them.
- (3) Regulation 2(5) of the Disregard Regulations (hedging relationships of a company) applies for the purposes of this section.
- (4) For the purposes of section 420 and this section—
- (a) “the Disregard Regulations” means the Loan Relationship and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256);
  - (b) the following are “relevant provisions” of the Disregard Regulations—
    - (i) regulation 7 (fair value profits or losses arising from derivative contracts which are currency contracts);
    - (ii) regulation 8 (profits or losses arising from derivative contracts which are commodity contracts or debt contracts);
    - (iii) regulation 9 (profits or losses arising from derivative contracts which are interest rate contracts).

*Effect of group-EBITDA (chargeable gains) election*

#### **422 Group-EBITDA (chargeable gains) election**

- (1) Where a group-EBITDA (chargeable gains) election has effect in relation to a period of account of a worldwide group (“the relevant period of account”), this Chapter applies in relation to the period subject to this section.

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- (2) Section 419 (the capital (disposals) adjustment) has effect as if—
- (a) the definition of C in subsection (1) of that section did not apply, and
  - (b) instead, C were defined for the purposes of that section as—
    - (i) the sum of any relevant gains, less
    - (ii) the sum of any relevant losses,or, where that is a negative amount, nil.
- (3) For the purposes of this section, there is a “relevant gain” or “relevant loss” where condition A or B is met.
- (4) Condition A is that a member of the group disposes of a relevant asset during the relevant period of account.
- (5) Condition B is that—
- (a) a member of the group ceases to be a member of the group during the relevant period of account, and
  - (b) the member held a relevant asset immediately before ceasing to be a member of the group.
- (6) Where condition A is met, the amount of the relevant gain or relevant loss is the amount of the chargeable gain or allowable loss that would, on the assumptions in subsection (8), accrue to the member on the disposal.
- (7) Where condition B is met, the amount of the relevant gain or relevant loss is the amount of the chargeable gain or allowable loss that would, on the assumptions in subsection (8), accrue to the member if the member—
- (a) disposed of the relevant asset immediately before ceasing to be a member of the group, and
  - (b) received such consideration for that disposal as it is just and reasonable to attribute to it, having regard to the consideration received by the group for its interests in the member.
- (8) The assumptions mentioned in subsections (6) and (7) are that—
- (a) all members of the group are within the charge to corporation tax;
  - (b) Schedule 7AC to TCGA 1992 (exemptions for disposals by companies with substantial shareholdings) is of no effect;
  - (c) Part 2 (double taxation relief) is of no effect.
- (9) Where—
- (a) the sum of any relevant losses, exceeds
  - (b) the sum of any relevant gains,
- the amount of the excess is treated as a relevant loss in relation to the period of account of the group immediately after the relevant period of account.
- (10) In this section “relevant asset” does not include shares in (or other interests giving an entitlement to share in the profits of) a member of the group.

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*Effect of interest allowance (alternative calculation) election*

**423 Capitalised interest brought into account for tax purposes in accordance with GAAP**

- (1) Where an interest allowance (alternative calculation) election (see paragraph 16 of Schedule 7A) has effect in relation to a period of account of a worldwide group (“the relevant period of account”), this Chapter applies in relation to the period subject to this section.
  - (2) Section 413 (adjusted net group-interest expense of a worldwide group) has effect as if—
    - (a) subsections (3)(a) and (4)(a) (which relate to capitalised interest) did not apply in relation to a GAAP-taxable asset or liability, and
    - (b) subsections (3)(b) and (4)(b) (which relate to capitalised interest written off) did not apply in relation to a GAAP-taxable asset or liability.
- [ Section 413 has effect, in the case of a GAAP-taxable asset that is a relevant asset, <sup>F281</sup>(2A) as if—
- (a) the definition of “upward adjustment” included so much of its carrying value written down in the group’s financial statements for the relevant period of account as is attributable to a relevant expense amount brought into account in the group’s financial statements in determining its carrying value, and
  - (b) the definition of “downward adjustment” included so much of the reduction of its carrying value written down in the group’s financial statements for the relevant period of account as is attributable to a relevant income amount brought into account in the group’s financial statements in determining its carrying value.
- (2B) For the purposes of subsection (2A) it does not matter whether the relevant expense or income amount is brought into account in determining the asset’s carrying value in the group’s financial statements for the relevant period of account or an earlier period.]
- (3) [<sup>F282</sup>But subsections (2)(b) and (2A) of this section are of no effect so far as] the adjusted net group-interest expense of the group for a period of account before the relevant period of account included any amount by virtue of section 413(3)(a) or (4) (a) in respect of the GAAP-taxable asset or liability.
  - (4) For the purposes of this section an asset or liability is “GAAP-taxable” if any profit or loss for corporation tax purposes in relation to the asset or liability falls to be calculated in accordance with generally accepted accounting practice [<sup>F283</sup>(and, for the purposes of this subsection, an asset is a GAAP-taxable asset even if an election under section 730 of CTA 2009 is, or could be, made in respect of it)].
  - (5) For the purposes of this section, all members of the group are treated as within the charge to corporation tax.

**Textual Amendments**

**F281** S. 423(2A)(2B) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 7(2)**

**F282** Words in s. 423(3) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 7(3)**



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**F283** Words in s. 423(4) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 7(4)**

#### **424 Employers' pension contributions**

- (1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.
- (2) The definition of “the group's profit before tax” in subsection (2) of section 416 has effect as if references to amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, did not include amounts so recognised in respect of employer pension contributions.
- (3) The group's profit before tax, as defined in that section, is reduced by the total of the relief to which members of the group are entitled, by virtue of sections 196 to 200 of FA 2004, in respect of relevant employer pension contributions paid during the period.
- (4) In this section—
  - (a) “employer pension contributions” means contributions paid by an employer under a registered pension scheme in respect of an individual;
  - (b) employer pension contributions are “relevant” if they are paid at a time at which the employer is a member of the group.

#### **Unpaid employees' remuneration**

**F284 424A**

- (1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.
- (2) The definition of “the group's profit before tax” in section 416(2) has effect as if references to amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, excluded amounts so recognised in respect of employees' remuneration that are not paid before the end of the period of 9 months immediately following the end of the period of account.
- (3) If—
  - (a) an amount is, as a result of subsection (2), excluded from the financial statements of the group for the period of account, and
  - (b) the amount is paid in a later period of account of the group in relation to which an interest allowance (alternative calculation) election has effect,the definition of “the group's profit before tax” in section 416(2) has effect as if references to amounts that are recognised in the financial statements of the group for the later period of account, as items of profit or loss, included the amount that is paid in that later period.
- (4) Section 1289 of CTA 2009 (unpaid remuneration: supplementary) applies for the purposes of this section as it applies for the purposes of section 1288 of that Act.]

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### Textual Amendments

**F284** S. 424A inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 9](#)

## 425 Employee share acquisitions

- (1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.
- (2) The definition of “the group's profit before tax” in subsection (2) of section 416 has effect as if references to amounts that are recognised in the financial statements of the group for the period, as items of profit or loss, did not include amounts so recognised in respect of employee share acquisition arrangements.
- (3) The group's profit before tax, as defined in that section, is reduced by such amount as, on a just and reasonable basis, reflects the effect on the group in the period of—
  - (a) deductions allowed to members of the group under Part 11 of CTA 2009 (relief for particular employee share acquisition schemes) and amounts treated as received by members of the group under that Part, and
  - (b) relief given to members of the group under Part 12 of that Act (other relief for employee share acquisitions).
- (4) In this section “employee share acquisition arrangements” means arrangements the corporation tax treatment of which is determined under Part 11 or 12 of CTA 2009.
- (5) For the purposes of this section, all members of the group are treated as within the charge to corporation tax.

## 426 Changes in accounting policy

- (1) Where an interest allowance (alternative calculation) election has effect in relation to a period of account of a worldwide group (“the relevant period of account”), this Chapter applies in relation to the period subject to this section.
- (2) The financial statements of the group for the relevant period of account are to be treated as subject to such adjustments as would be made to them under the change of accounting policy provisions if the group were a company that—
  - (a) was within the charge to corporation tax,
  - (b) held the assets and owed the liabilities recognised in the financial statements, to the extent that they are so recognised, and
  - (c) carried on the trades and other activities giving rise to amounts recognised in the financial statements as items of profit and loss.
- (3) In this section “the change of accounting policy provisions” means [<sup>F285</sup>the following provisions as modified by subsection (4)]—
  - (a) Chapter 14 of Part 3 of CTA 2009 (trading profits);
  - [ sections 261 and 262 of that Act (property profits);]
  - <sup>F286</sup>(ab) (b) sections 315 to 319 of that Act (loan relationships);
  - (c) sections 613 to 615 of that Act (derivative contracts);

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- (d) Chapter 15 of Part 8 of that Act (intangible fixed assets);
  - (e) the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271);
  - [ paragraphs 12 to 17 of Schedule 14 to FA 2019 (transitional provision
  - <sup>F287</sup>(f) following the repeal of section 53 of FA 2011) so far as they have effect in relation to adjustments under Chapter 14 of Part 3 of CTA 2009 or sections 261 and 262 of that Act.]
- [<sup>F288</sup>(4) The provisions mentioned in subsection (3)—
- (a) are to have effect for the purposes of this section as if their application were limited to cases where there is a change of accounting policy and as if any election had been made under the provisions, and
  - (b) are to have effect subject to any modifications necessary for the purposes of this section.]

#### Textual Amendments

- F285** Words in s. 426(3) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 10(2)(a)**
- F286** S. 426(3)(ab) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 10(2)(b)**
- F287** S. 426(3)(f) inserted (with effect in accordance with Sch. 14 para. 18(2) of the amending Act) by Finance Act 2019 (c. 1), **Sch. 14 para. 18(1)**
- F288** S. 426(4) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 11 para. 10(3)**

#### *Effect of interest allowance (non-consolidated investment) election*

### 427 Group interest and group-EBITDA

- (1) Where an interest allowance (non-consolidated investment) election (see paragraph 17 of Schedule 7A) has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.
- (2) In this section and section 428 (which contains further interpretative provision)—
  - (a) “the principal worldwide group” means the worldwide group mentioned in subsection (1);
  - (b) “the relevant period of account” means the period of account mentioned in subsection (1).
- (3) The financial statements of the principal worldwide group for the relevant period of account are treated as if—
  - (a) no relevant income amounts were recognised in them, as items of profit or loss, so far as they relate to financial liabilities owed to any member of the principal worldwide group by any member of an associated worldwide group, and
  - (b) no amounts were recognised in them, as items of profits or loss, in respect of any profit or loss attributable to an interest held by any member of the principal worldwide group in any member of an associated worldwide group

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- (4) The adjusted net group-interest expense of the principal worldwide group for the relevant period of account is treated as increased by the appropriate proportion of the adjusted net group-interest expense for the period of each associated worldwide group.
- (5) The qualifying net group-interest expense of the principal worldwide group for the relevant period of account is treated as increased by the appropriate proportion of the qualifying net group-interest expense for the period of each associated worldwide group.
- [ Any increase to be made as a result of subsection (4) or (5) is to be made as part of a
- <sup>F289</sup>(5A) single calculation required by section 413(1) or 414(1) (so that the amount produced by that calculation is subject to section 413(2) or 414(2)).]
- (6) The group-EBITDA of the principal worldwide group for the relevant period of account is treated as increased by the appropriate proportion of the group-EBITDA of each associated worldwide group for the period.
- (7) In this section “the appropriate proportion”, in relation to an associated worldwide group means the proportion of the profits or losses of the associated worldwide group arising in the relevant period of account to which the principal worldwide group is entitled.

#### Textual Amendments

**F289** S. 427(5A) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 11](#)

#### 428 Section 427: associated worldwide groups

- (1) This section has effect for the purposes of section 427 and this section.
- (2) “Associated worldwide group” means the worldwide group of which a specified non-consolidated associate is the ultimate parent.
- (3) Where (apart from this subsection) a specified non-consolidated associate does not fall within section 473(1)(a) (conditions for being the ultimate parent of a worldwide group), it is treated as if it did fall within that provision.
- (4) Where (apart from this subsection) financial statements of an associated worldwide group are not drawn up in respect of the relevant period of account, IAS financial statements of the associated worldwide group are treated as having been drawn up in respect of that period.
- (5) The associated worldwide group's financial statements for the relevant period of account are treated as if no relevant expense amounts were recognised in them, as items of profit or loss, so far as they relate to financial liabilities owed to any member of the principal worldwide group by any member of the associated worldwide group.
- (6) The reference in section 427(6) to profits or losses of the associated worldwide group to which the principal worldwide group is entitled does not include any profits or losses that relate to times when the non-consolidated associate is a member of the principal worldwide group.

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- (7) Subsection (8) has effect in the application of this Part (for the purposes mentioned in subsection (1)) in relation to the financial statements of an associated worldwide group for the relevant period of account.
- (8) The associated worldwide group is treated—
  - (a) as having made an interest allowance (alternative calculation) election if and only if such an election has effect in relation to the relevant period of account of the principal worldwide group, and
  - (b) as not having made any other election under this Part.
- (9) In this section “specified” means specified in the interest allowance (non-consolidated investment) election.

#### **429 Meaning of “non-consolidated associate”**

- (1) An entity is a “non-consolidated associate” of a worldwide group, in relation to a period of account of the group (“the relevant period of account”) if condition A, B or C is met.
- (2) Condition A is that the entity is accounted for in the financial statements of the group for the relevant period of account—
  - (a) as a joint venture or an associate, and
  - (b) using the gross equity method or the equity method.
- (3) Condition B is that—
  - (a) the entity is a partnership, and
  - (b) an interest allowance (consolidated partnership) election has effect in relation to the relevant period of account.
- (4) Condition C is the entity is a non-consolidated subsidiary of the ultimate parent at any time during the relevant period of account.
- (5) In this section the following expressions have the meaning they have for accounting purposes—
  - “associate”;
  - “equity method”;
  - “gross equity method”;
  - “joint venture”.
- (6) In this section “entity” includes anything which is treated as an entity in the financial statements of the worldwide group (regardless of whether it has a legal personality as a body corporate).
- (7) This section has effect for the purposes of this Part.

*Effect of interest allowance (consolidated partnerships) election*

#### **430 Interest allowance (consolidated partnerships) election**

- (1) Where an interest allowance (consolidated partnerships) election (see paragraph 18 of Schedule 7A) has effect in relation to a period of account of a worldwide group, this Chapter applies in relation to the period subject to this section.

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- (2) The financial statements of the group for the period are treated as if—
- (a) no amounts were recognised in them, as items of profit or loss, in respect of any income or expenses of a specified consolidated partnership, and
  - (b) instead, each specified consolidated partnership were accounted for using the equity method.
- (3) In subsection (2)(b) “the equity method” has the meaning it has for accounting purposes.
- (4) In this Part “consolidated partnership”, in relation to a period of account of a worldwide group, means a partnership in relation to which conditions A and B are met.
- (5) Condition A is that, in the financial statements of the worldwide group for the period, the results of the partnership are consolidated with those of the ultimate parent as the results of a single economic entity.
- (6) Condition B is that at no time during the period does the partnership have a subsidiary that is a company.
- (7) In this section—
- (a) “specified” means specified in the interest allowance (consolidated partnerships) election or elections;
  - (b) “subsidiary” has the meaning given by international accounting standards.

### *Interpretation*

#### **431 Interpretation of Chapter**

In this Chapter the following expressions have the meaning they have for accounting purposes—

- “item of profit or loss”;
- “item of other comprehensive income”.

## **CHAPTER 8**

### PUBLIC INFRASTRUCTURE

#### *Overview*

#### **432 Overview of Chapter**

- (1) This Chapter —
- (a) alters the way in which this Part has effect in relation to companies (referred to as “qualifying infrastructure companies”) that are fully taxed in the United Kingdom, and
  - (b) operates by reference to the provision of public infrastructure assets or the carrying on of certain other related activities.
- (2) In addition to the requirement for the company to be fully taxed in the United Kingdom, the qualifying requirements are—

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- (a) a requirement designed to ensure that the company's income and assets are referable to activities in relation to public infrastructure assets, and
  - (b) a requirement for the company to make an election (which may be revoked, subject to a 5-year rule in relation to the revocation and the ability to make a fresh election).
- (3) Two different types of asset meet the definition of a “public infrastructure asset”, namely—
- (a) tangible assets forming part of the infrastructure of the United Kingdom (or the UK sector of the continental shelf) that meet a public benefit test, and
  - (b) buildings (or parts of buildings) that are part of a UK property business and are let (or sub-let) on a short-term basis to unrelated parties.
- (4) In either case an asset counts as a public infrastructure asset only if—
- (a) it has had, has or is likely to have an expected economic life of at least 10 years, and
  - (b) it is shown in a balance sheet of a member of the group that is fully taxed in the United Kingdom.
- (5) The detail of the above tests is set out in sections 433 to 437.
- (6) The substantive rules provide that an amount does not count as a tax-interest expense amount if—
- (a) the creditor in relation to the amount is an unrelated party or another qualifying infrastructure company or the amount is in respect of a loan relationship entered into on or before 12 May 2016 (see sections 438 and 439), and
  - (b) the recourse of the creditor in relation to the amount is limited to the income or assets of, or shares in or debt issued by, a qualifying infrastructure company (ignoring certain financial assistance and certain non-financial guarantees).
- (7) In addition—
- (a) provision is made for adjusting the operation of this Part to take into account the effect of the above rules (for example, the tax-EBITDA of a qualifying infrastructure company is treated as nil (see section 441)),
  - (b) provision is made modifying the operation of this Chapter in the case of joint venture companies or partnerships or other transparent entities (see sections 444 to 447), and
  - (c) provision is made in relation to the decommissioning of a public infrastructure asset (see section 448).

### *Key concepts*

#### **433 Meaning of “qualifying infrastructure company”**

- (1) For the purposes of this Chapter a company is a “qualifying infrastructure company” throughout an accounting period if—
- (a) it meets the public infrastructure income test for the accounting period (see subsections (2) to (4)),
  - (b) it meets the public infrastructure assets test for the accounting period (see subsections (5) to (10)),

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- (c) it is fully taxed in the United Kingdom in the accounting period [F290(see subsections (11) and (12))], and
  - (d) it has made an election for the purposes of this section that has effect for the accounting period (see section 434).
- (2) A company meets the public infrastructure income test for an accounting period if all, or all but an insignificant proportion, of its income for the accounting period derives from—
- (a) qualifying infrastructure activities carried on by the company (see sections 436 and 437),
  - (b) shares in a qualifying infrastructure company, or
  - (c) loan relationships or other financing arrangements to which the only other party is a qualifying infrastructure company.
- (3) A company also meets the public infrastructure income test for an accounting period if it has no income for the period.
- (4) In determining whether the public infrastructure income test for an accounting period is met, income which does not derive from any of the matters mentioned in subsection (2)(a) to (c) is ignored if, having regard to all the circumstances, it is reasonable to regard the amount of the income as insignificant.
- (5) A company meets the public infrastructure assets test for an accounting period if all, or all but an insignificant proportion, of the total value of the company's assets recognised in an appropriate balance sheet on each day in that period derives from—
- (a) tangible assets that are related to qualifying infrastructure activities,
  - (b) service concession arrangements in respect of assets that are related to qualifying infrastructure activities,
  - (c) financial assets to which the company is a party for the purpose of the carrying on of qualifying infrastructure activities by the company or another associated qualifying infrastructure company,
  - [F291 (ca) assets held for the purposes of a pension scheme under which benefits are provided to, or in respect of, persons employed for the purpose of the carrying on of qualifying infrastructure activities by the company or another associated qualifying infrastructure company,
  - (cb) assets in respect of deferred tax so far as attributable to qualifying infrastructure activities carried on by the company or another associated qualifying infrastructure company,]
  - (d) shares in a qualifying infrastructure company, or
  - (e) loan relationships or other financing arrangements to which the only other party is a qualifying infrastructure company.
- (6) If a company has no assets recognised in an appropriate balance sheet on any day in an accounting period, the company is to be taken as meeting the public infrastructure assets test in respect of that day.
- (7) In determining whether the public infrastructure assets test for an accounting period is met in respect of any day, the value of an asset which does not derive from any of the matters mentioned in subsection (5)(a) to (e) is ignored if, having regard to all the circumstances, it is reasonable to regard the value of the asset as insignificant.
- (8) For the purposes of subsection (5)(a) and (b) assets are “related to qualifying infrastructure activities” in the case of a company if the assets are—



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- (a) public infrastructure assets (see section 436(2) and (5)) in relation to the company that are provided by the company, or
  - (b) other assets used in the course of a qualifying infrastructure activity carried on by the company or by an associated qualifying infrastructure company.
- (9) For the purposes of this section the reference to the value of an asset recognised in an appropriate balance sheet of a company on a day is to the value which is, or would be, recognised in a balance sheet of the company drawn up on that day.
- (10) A company is not to be taken as failing to meet the public infrastructure assets test for an accounting period if, ignoring this subsection, that test would have been failed on a particular day or days merely as a result of particular circumstances—
- (a) which existed, and
  - (b) which were always intended to exist,
- for a temporary period of an insignificant duration.
- (11) A company is fully taxed in the United Kingdom in an accounting period if—
- (a) every [<sup>F292</sup>source of income that the company has] at any time in the accounting period is within the charge to corporation tax,
  - (b) the company has not made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) that has effect for the accounting period, and
  - (c) the company has not made a claim for relief under Chapter 2 of Part 2 (double taxation relief) for the accounting period.
- [ In determining whether the condition in subsection (11)(a) is met in the case of a <sup>F293</sup>(12) company not resident in the United Kingdom in an accounting period, a source of income of the company is ignored if, having regard to all the circumstances, it is reasonable to regard as insignificant the amount of income arising in the accounting period from the source.]

#### Textual Amendments

**F290** Words in s. 433(1)(c) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 7\(2\), 23\(1\)](#)

**F291** S. 433(5)(ca)(cb) inserted (retrospectively) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 paras. 12, 24](#)

**F292** Words in s. 433(11)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 7\(3\), 23\(1\)](#)

**F293** S. 433(12) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 7\(4\), 23\(1\)](#)

#### 434 Elections under section 433

- (1) An election under section 433—
- (a) must be made before [<sup>F294</sup>the end] of the accounting period in relation to which it is to have effect, and
  - (b) has effect in relation to that accounting period and all subsequent accounting periods (subject to subsections (2) to (4)).
- (2) An election under section 433 may be revoked.
- (3) A revocation of an election under section 433—

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- (a) must be made before the beginning of the accounting period from which the revocation is to have effect, but
  - (b) cannot have effect in relation to any accounting period that begins before the end of the period of 5 years beginning with the first day of the first accounting period in relation to which the election had effect.
- (4) Once revoked, a fresh election may be made under section 433 but cannot have effect in relation to any accounting period that begins before the end of the period of 5 years beginning with the first day of the accounting period from which the revocation had effect.
- (5) If—
- (a) a qualifying infrastructure company transfers to another company a business, or a part of a business, that consists of the carrying on of qualifying infrastructure activities,
    - <sup>F295</sup>(ab) [ the time of the transfer falls in a period of account of a worldwide group of which both the transferor and transferee are members,] and
    - (b) the transferee has not made an election under section 433 that has effect for the accounting period in which the transfer takes place,
 the transferee is to be treated as if it had made the election under that section that the transferor had made.
- (6) If a company has made an election under section 433 that has effect in relation to an accounting period, the company—
- (a) may not make an election under section 18A of CTA 2009 that has effect for the accounting period, and
  - (b) may not make a claim for relief under Chapter 2 of Part 2 for the accounting period.

#### Textual Amendments

**F294** Words in s. 434(1)(a) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 8\(2\), 23\(1\)](#)

**F295** S. 434(5)(ab) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 8\(3\), 23\(1\)](#)

### 435 Group elections modifying the operation of sections 433 and 434

- (1) Two or more companies which are members of the same worldwide group may jointly make an election under this section modifying the operation of sections 433 and 434 in relation to them for the times during which they remain members of that group.
- (2) An election under this section—
  - (a) has effect from a date specified in the election;
  - (b) may be revoked jointly by the members of the group in relation to which the election has effect from a date specified in the revocation;
  - (c) ceases to have effect in relation to a company which gives a notice to an officer of Revenue and Customs, and to the companies in relation to which the election has effect, notifying them of its withdrawal from the election from a date specified in the notice.
- (3) A date specified in an election, revocation or notice may not be before the date on which it is made or given.

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- (4) An election under this section which has effect at particular times (“relevant times”) in relation to particular companies (“elected companies”) modifies the operation of sections 433 and 434 as follows.
- (5) If an elected company (“C”) has made an election under section 433 which has effect for an accounting period that includes relevant times, that section has effect as if, in determining whether anything is insignificant for the purposes of section 433(2), (4), (5) or (7), C also had the income and assets that the other elected companies had at those times.
- (6) If—
  - (a) an elected company (“C”) has made an election under section 433 which has effect for an accounting period including relevant times, and
  - (b) C fails to meet one or more of the tests in subsection (1)(a) to (c) of that section in relation to that accounting period otherwise than as a result of this subsection,all the other elected companies are also treated as failing to meeting those tests for so much of their accounting periods as consists of the relevant times in the accounting period of C.
- (7) If, in a case where subsection (6) applies, the deemed failed period does not coincide with an accounting period of another elected company (“E”), the accounting period of E is treated for the purposes of this Part as if it consisted of separate accounting periods beginning and ending at such times as secure that none of the separate accounting periods fall partly within the deemed failed period.
- (8) For this purpose “the deemed failed period” means the period consisting of the relevant times in the accounting period of C mentioned in subsection (6).
- (9) All such apportionments as are necessary for the purposes of, or in consequence of, subsections (5) to (7) are to be made on a just and reasonable basis.
- (10) If—
  - (a) elected companies have made elections under section 433 which have effect for accounting periods including relevant times, and
  - (b) more than half of those elected companies have each made an election under that section that has had effect for a period of at least 5 years,section 434(3)(b) does not apply in relation to any of the elected companies.

#### **436 Meaning of “qualifying infrastructure activity”**

- (1) For the purposes of this Chapter a company carries on a “qualifying infrastructure activity” if the company—
  - (a) provides an asset that is a public infrastructure asset in relation to it (see subsections (2) and (5)), or
  - (b) carries on any other activity that is ancillary to, or facilitates, the provision of an asset that is a public infrastructure asset in relation to it.
- (2) For the purposes of this Chapter an asset is a “public infrastructure asset” in relation to a company at any time if—
  - (a) the asset is, or is to be, a tangible asset forming part of the infrastructure of the United Kingdom or the UK sector of the continental shelf,

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- (b) the asset meets the public benefit test (see subsections (3) and (4)),
  - (c) the asset has had, has or is likely to have an expected economic life of at least 10 years, and
  - (d) the asset meets the group balance sheet test [<sup>F296</sup>(see subsections (10) and (10A))] in relation to the company.
- (3) An asset meets the “public benefit test” if—
- (a) the asset is, or is to be, procured by a relevant public body, or
  - (b) the asset is, or is to be, used in the course of a regulated activity.
- (4) An asset is used in the course of a “regulated activity” if its use—
- (a) is regulated by an infrastructure authority (see section 437(2)), or
  - (b) could be regulated by an infrastructure authority if the authority exercised any of its powers.
- (5) For the purposes of this Chapter a building, or part of a building, is also a “public infrastructure asset” in relation to a company at any time if—
- (a) the company, or another member of the worldwide group of which it is a member at that time, carries on a UK property business consisting of or including the building or part,
  - (b) the building or part is, or is to be, let on a short-term basis to persons who, at that time, are not related parties of the company or member,
  - (c) the building or part has had, has or is likely to have an expected economic life of at least 10 years, and
  - (d) the building or part meets the group balance sheet test in relation to the company.
- (6) A building, or part of a building, is “let” to a person if the person is entitled to the use of the building or part under a lease or other arrangement.
- (7) A building, or part of a building, is let on a “short-term basis” if the lease or other arrangement in question—
- (a) has an effective duration which is 50 years or less, and
  - (b) is not an arrangement to which any provision of Chapter 2 of Part 16 of CTA 2010 applies (finance arrangements).
- (8) Whether or not a lease or other arrangement has an effective duration which is 50 years or less is determined in accordance with Chapter 4 of Part 4 of CTA 2009 (reading any reference to a lease as a reference to a lease or other arrangement within subsection (6)).
- (9) For the purposes of this section references to a building or part of a building being let include the building or part being sub-let, and, accordingly, references to a lease include a sub-lease.
- (10) An asset meets the “group balance sheet test” in relation to a company at any time if—
- (a) an entry in respect of the asset is, or would be, recognised (whether as a tangible asset or otherwise) in a balance sheet of the company, or an associated company, that is drawn up at that time, and
  - (b) the company or associated company is within the charge to corporation tax at that time in respect of all of its sources of income and no election or claim mentioned in section 433(11)(b) or (c) has effect for a period including that time.

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[ In determining whether the condition in subsection (10)(b) is met in relation to a <sup>F297</sup>(10A) company not resident in the United Kingdom at any time, a source of income of the company is ignored if, having regard to all the circumstances, it is reasonable to regard as insignificant the amount of income arising from the source for the accounting period including that time.]

(11) For the purposes of this Chapter references to provision, in relation to a public infrastructure asset, include its acquisition, design, construction, conversion, improvement, operation or repair.

#### Textual Amendments

**F296** Words in s. 436(2)(d) substituted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 9\(2\), 23\(1\)](#)

**F297** S. 436(10A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 9\(3\), 23\(1\)](#)

### 437 Section 436: supplementary

- (1) In section 436 “infrastructure” includes—
- (a) water, electricity, gas, telecommunications or sewerage facilities,
  - (b) oil pipelines, oil terminals or oil refineries,
  - (c) railway facilities (including rolling stock), roads or other transport facilities,
  - (d) health or educational facilities,
  - (e) facilities or housing accommodation provided for use by members of any of the armed forces or of any police force,
  - (f) court or prison facilities,
  - (g) waste processing facilities, and
  - (h) buildings (or parts of buildings) occupied by any relevant public body.
- (2) Each of the following is an “infrastructure authority” for the purposes of section 436(4)—
- (a) the Civil Aviation Authority so far as exercising functions in relation to the provision of airports (within the meaning of the Airports Act 1986),
  - (b) each of the following so far as exercising functions in relation to waste processing—
    - (i) the Environment Agency,
    - (ii) the Scottish Environmental Protection Agency,
    - (iii) the Northern Ireland Environment Agency, or
    - (iv) Natural Resources Wales,
  - (c) the Gas and Electricity Markets Authority,
  - (d) each of the following so far as exercising functions in relation to the management of ports or harbours—
    - (i) a harbour authority within the meaning of the Harbours Act 1964, or
    - (ii) a harbour authority within the meaning of the Harbours Act (Northern Ireland) 1970,
  - (e) the Northern Ireland Authority for Utility Regulation,

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- (f) the Office of Communications so far as exercising functions in relation to the provision of electronic communication services (within the meaning of the Communications Act 2003) or the management of the radio spectrum,
  - (g) the Office of Nuclear Regulation,
  - (h) the Office of Rail and Road,
  - (i) the Oil and Gas Authority,
  - (j) the Water Services Regulation Authority or the Water Industry Commission for Scotland, or
  - (k) any other public authority which has functions of a regulatory nature exercisable in relation to the use of tangible assets forming part of the infrastructure of the United Kingdom or the UK sector of the continental shelf.
- (3) The Commissioners may by regulations amend the definition of “infrastructure authority”.

*Exemption and related provision*

**438 Exemption for interest payable to third parties etc**

- (1) Amounts that arise to a qualifying infrastructure company in a relevant accounting period are not to be regarded for the purposes of this Part as tax-interest expense amounts of the company so far as they qualify as exempt amounts in that period (see subsections (2) and (3)).
- (2) An amount qualifies as an exempt amount so far as it is attributable, on a just and reasonable apportionment, to the times in the relevant accounting period when—
  - (a) each creditor in relation to the amount is within subsection (3) or the amount is in respect of a qualifying old loan relationship (see section 439), and
  - (b) the recourse of each creditor in relation to the amount is limited to relevant infrastructure matters (see subsections (4) to (6)).
- (3) A creditor is within this subsection if—
  - (a) the creditor is not a related party of the company, or
  - (b) the creditor is a company which is a qualifying infrastructure company, but section 466(2) does not apply for the purposes of paragraph (a).
- (4) The recourse of a creditor is limited to relevant infrastructure matters if, in the event that the company fails to perform its obligations in question, the recourse of the creditor is limited to—
  - (a) income of a qualifying infrastructure company,
  - (b) assets of a qualifying infrastructure company, or
  - (c) shares in or debt issued by a qualifying infrastructure company,
 whether the income, assets, shares or debt relate to the company concerned or another qualifying infrastructure company.
- (5) For the purposes of subsection (4) a guarantee, indemnity or other financial assistance in favour of the creditor is ignored if—
  - (a) it is provided before 1 April 2017, or
  - (b) it is provided at any later time by a person who, at that time, is not a related party of the company or is a relevant public body.

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- (6) For the purposes of subsection (4) a non-financial guarantee in favour of the creditor is ignored if—
- (a) it guarantees the performance by any person of contractual obligations to provide goods or services to a qualifying infrastructure company,
  - (b) it is given by the person providing the goods or services or by a person who is a related party of that person, and
  - (c) the maximum amount for which the guarantor is liable does not exceed the consideration given under the contract for the provision of the goods or services.
- (7) In this section “creditor” means—
- (a) if the amount meets condition A in section 382, the person who is party to the loan relationship as creditor,
  - (b) if the amount meets condition B in that section, the person other than the company who is party to the derivative contract, and
  - (c) if the amount meets condition C in that section, the person other than the company who is party to the relevant arrangement or transaction.

#### **439 Exemption in respect of certain pre-13 May 2016 loan relationships**

- (1) A loan relationship is a “qualifying old loan relationship” of a qualifying infrastructure company if—
- (a) the company entered into the loan relationship on or before 12 May 2016, and
  - (b) as at that date, at least 80% of the total value of the company's future qualifying infrastructure receipts for the qualifying period was highly predictable by reference to qualifying public contracts,
- but see subsection (8) for cases where a loan relationship is not a qualifying old loan relationship of the company.
- (2) For the purposes of this section “the qualifying period” means—
- (a) in a case where the loan relationship would cease to subsist at any time before 12 May 2026 (if any amendments of the loan relationship made on or after 12 May 2016 are ignored), the period beginning with 12 May 2016 and ending with that time, and
  - (b) in any other case, the period of 10 years beginning with 12 May 2016.
- (3) For the purposes of this section “qualifying infrastructure receipts”, in relation to a company (“C”), means—
- (a) receipts arising from qualifying infrastructure activities carried on by C, and
  - (b) such proportion of the receipts arising from qualifying infrastructure activities carried on by another company as, on a just and reasonable basis, is attributable to C's interests in the other company (whether direct or indirect) arising as a result of shares or loans <sup>F298</sup>,
- but ignoring amounts that represent the reimbursement of expenses incurred by C or the other company.]
- (4) For the purposes of this section receipts are highly predictable by reference to qualifying public contracts so far as their value can be predicted with a high degree of certainty because—
- (a) the amounts of the receipts are fixed by a qualifying public contract, and

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- (b) the factors affecting the volume of receipts are fixed by a qualifying public contract or are otherwise capable of being predicted with a high degree of certainty.
- (5) For this purpose any provision of a qualifying public contract (however expressed) that adjusts the amount of a receipt for changes in the general level of prices or earnings is to be ignored.
- (6) For the purposes of this section a contract is a “qualifying public contract” if—
  - (a) it was entered into at any time on or before 12 May 2016 and, as at that time, it was expected to have effect for at least 10 years, and
  - (b) it was entered into either with a relevant public body or following bids made in an auction conducted by a relevant public body.
- (7) If a qualifying old loan relationship is amended after 12 May 2016 so as to increase the amount lent or extend the period for which the relationship is to subsist—
  - (a) section 438 is to have effect as if none of those amendments were made (and, accordingly, the exemption under that section has no effect in relation to the increase in the amount or the period of the extension), and
  - (b) such apportionments of amounts in respect of the relationship are to be made as are just and reasonable.
- (8) A loan relationship to which a qualifying infrastructure company is a party at any time is not a qualifying old loan relationship of the company at that or any subsequent time if, on the relevant assumptions, the condition in subsection (1)(b) would not have been met.
- (9) The relevant assumptions are that—
  - (a) the assets held by the company at that time were the only assets that the company held on 12 May 2016,
  - (b) the assets held at that time by any other company in which it has interests (whether direct or indirect) arising as a result of shares or loans were the only assets that the other company held on 12 May 2016, and
  - (c) a qualifying infrastructure receipt could not be regarded as highly predictable if, on 12 May 2016, the public infrastructure asset in question did not exist or was not in the course of being constructed or converted.
- (10) For the purposes of this section the value of a receipt on 12 May 2016 is taken to be its present value on that date, discounted using a rate that can reasonably be regarded as one that, in accordance with normal commercial criteria, is appropriate for the purpose.
- (11) In this section “receipts” means receipts of a revenue nature.

#### Textual Amendments

**F298** Words in s. 439(3) inserted (retrospectively) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 paras. 13, 24](#)

## 440 Loans etc made by qualifying infrastructure companies to be ignored

- (1) This section applies where—
  - (a) a company is a qualifying infrastructure company throughout an accounting period, and



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(b) the company would (but for this section) have had tax-interest income amounts in the accounting period.

(2) For the purposes of this Part, the company is treated as if it did not have any tax-interest income amounts in the accounting period.

#### **441 Tax-EBITDA of qualifying infrastructure company to be nil**

(1) This section applies where a company is a qualifying infrastructure company throughout an accounting period.

(2) For the purposes of this Part, the tax-EBITDA of the company for the accounting period is nil.

#### **442 Amounts of qualifying infrastructure company left out of account for other purposes**

(1) This section applies where a company is a qualifying infrastructure company throughout a relevant accounting period.

(2) In calculating—

(a) the adjusted net group-interest expense of the worldwide group for the period of account concerned, or

(b) the qualifying net group-interest expense of the worldwide group for the period of account concerned,

amounts that are exempt amounts of the company under section 438, or are treated as mentioned in section 440, are to be left out of account.

(3) For the purposes of this Part the group EBITDA of the worldwide group for the period of account concerned is to be calculated as if the group did not include the company in respect of the relevant accounting period.

#### **443 Interest capacity for group with qualifying infrastructure company etc**

(1) If a worldwide group for a period of account includes a qualifying infrastructure company at any time, the general rule is that the interest capacity of the group for the period is calculated as if section 392 did not contain the de minimis provisions.

[<sup>F299</sup>(2) There is an exception to the general rule (see subsections (4) and (5)) which—

(a) applies if no tax-interest income amounts of any qualifying infrastructure company (“Q”) which is a member of the group for the period are receivable from another qualifying infrastructure company which is not a member of the group for the period but is a related party of Q at any time in that period, and

(b) depends on the comparison set out in subsection (3),

and, for the purposes of paragraph (a), tax-interest income amounts are to be ignored if, having regard to all the circumstances, it is reasonable to regard the amounts as insignificant.]

(3) The following amounts must be compared with each other—

(a) the total disallowed amount of the group in the period calculated as if this Chapter (including subsection (1) of this section but ignoring the remainder of it) were contained in this Part (“the Chapter 8 amount”), and

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- (b) the total disallowed amount of the group in the period calculated as if this Chapter were not contained in this Part and as if section 392 contained only the de minimis provisions (“the ordinary amount”).
- (4) If the Chapter 8 amount exceeds the ordinary amount, the interest capacity of the worldwide group for the period is taken to be the de minimis amount (as defined by 392(3)).
- (5) If the interest capacity of the worldwide group for the period is given by subsection (4), nothing else in this Chapter has effect in relation to the worldwide group for the period.
- (6) For the purposes of this section the reference to section 392 not containing the de minimis provisions is a reference to that section not containing subsections (2) and (3) of that section.
- (7) For the purposes of this section the reference to section 392 containing only the de minimis provisions is a reference to that section having effect as if for subsections (1) and (2) of that section there were substituted—
- “(1) For the purposes of this Part the “interest capacity” of a worldwide group for a period of account of the group is the de minimis amount.”

#### Textual Amendments

**F299** S. 443(2) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 10](#)

### Supplementary

#### 444 Joint venture companies

- (1) This section makes modifications of this Part in relation to an accounting period of a qualifying infrastructure company (“the joint venture company”) [<sup>F300</sup>which is the ultimate parent of a worldwide group at all times in that period] where—
- one or more qualifying infrastructure companies (“the qualifying investor or investors”) have shares in the joint venture company,
  - other persons (“the other investors”) who are not qualifying infrastructure companies have all the other shares in the joint venture company,
  - each of the investors (that is to say, the qualifying investor or investors and the other investors) has lent money to the joint venture company,
  - the amounts each of the investors has lent stand in the same, or substantially the same, proportion as the shares in the joint venture company that each of them has,
  - at all times in the accounting period the investors have the same rights in relation to the shares in or assets of the joint venture company and the same rights in relation to the money debt or debts in question, and
  - the joint venture company makes an election for the purposes of this section that has effect for the accounting period (but see section 445 for further provision about elections).
- (2) Section 401 has effect as if the qualifying investor or investors were not investors in the group for times in the accounting period falling in the relevant period of account.

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- (3) Section 427 has effect as if, in determining the appropriate proportion in relation to an associated worldwide group, it is assumed that the qualifying investor or investors were not investors in the group for times in the accounting period falling in the relevant period of account.
- (4) In consequence of subsection (2) or (3), the shares of the qualifying investor or investors in the group are treated as distributed for times in the accounting period falling in the relevant period of account among the other investors in proportion to the actual shares of the other investors in the group.
- (5) For the purposes of section 438 there is a reduction in any amount that would otherwise qualify as an exempt amount in the accounting period where—
  - (a) the exemption operates by reference to creditors being within subsection (3) of that section, and
  - (b) the creditor in relation to the amount is not an investor.
- (6) The amount qualifying as an exempt amount is to be reduced so that only the qualifying proportion of it qualifies.
- (7) For the purposes of this section—

“the qualifying proportion” means the proportion of the shares that the qualifying investor or investors have in the joint venture company in the accounting period, and

“the non-qualifying proportion” means the proportion of the shares that the other investors have in the joint venture company in the accounting period.
- (8) The treatment mentioned in section 440(2) is to extend only to the qualifying proportion of the tax-interest income amounts in the accounting period.
- (9) Section 441(2) has effect as if the tax-EBITDA of the company for the accounting period were the amount determined as follows.

*Step 1* Find the tax-EBITDA of the company for the accounting period if section 441 were ignored.

*Step 2* The tax-EBITDA of the company for the accounting period is equal to the non-qualifying proportion of that amount.
- (10) Section 442(3) has effect as if for the words “the group did not include the company” there were substituted “ amounts of the company were limited to the non-qualifying proportion of those amounts ”.

#### Textual Amendments

**F300** Words in s. 444(1) inserted (with effect in accordance with Sch. 8 para. 24 of the amending Act) by Finance Act 2018 (c. 3), [Sch. 8 para. 11](#)

## 445 Joint venture groups

- (1) This section applies if the joint venture company is the ultimate parent of a multi-company worldwide group at any time in the accounting period.
- (2) An election made by the joint venture company under section 444 in relation to the accounting period is of no effect unless all the other members of the group—
  - (a) are qualifying infrastructure companies for the accounting period,

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- (b) are wholly-owned subsidiaries of the joint venture company throughout the accounting period, and
  - (c) have the same accounting periods as the joint venture company.
- (3) In determining whether the conditions in section 444(1)(c) to (e) are met in relation to the accounting period of the joint venture company, any loans made to any of the other members of the group are treated as if they were made to the joint venture company.
- (4) If the joint venture company makes an election under section 444 for the accounting period, the modifications made by subsections (5) to (10) of that section are also to apply in relation to each of the other members of the group.

#### **446 Joint ventures: supplementary**

- (1) If—
- (a) the joint venture company makes an election under section 444 in relation to an accounting period,
  - (b) that company, or any member of the worldwide group of which it is a member, is the creditor for the purposes of section 438 in any case, and
  - (c) the company mentioned in that section in that case is not a member of that group at any time in the accounting period,
- section 438 has effect in that case as if subsection (3)(b) were of no effect in relation to that time.
- (2) Section 434(1) to (5) apply to an election under section 444 as they apply to an election under section 433.
- (3) For the purposes of section 444 the investors are not to be regarded as having the same rights in relation to the shares in or assets of the joint venture company, or in relation to the money debt or debts in question, at any time if—
- (a) provision is in force at that time in respect of any of the relevant matters that differs in relation to different persons or has, or is capable of having, a different effect in relation to different persons (whether at that or any subsequent time),
  - (b) arrangements are in place at that time the effect of which is that, at that or any subsequent time, the rights of some persons in relation to any of the relevant matters differ, or will or may differ, from the rights of others in relation to the matters in question, or
  - (c) any other circumstances exist at that time as a result of which the rights of some persons in relation to any of the relevant matters cannot reasonably be regarded as being, in substance, the same rights as others in relation to the matters in question at that or any subsequent time.
- (4) In this section—
- (a) “the relevant matters” means the shares in or assets of the joint venture company or the money debt or debts in question,
  - (b) “rights” includes powers,
  - (c) “different persons” includes persons of a different class or description, and
  - (d) “arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

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#### **447 Partnerships and other transparent entities**

- (1) Subsections (2) to (4) apply where a company is a member of a partnership.
- (2) For the purposes of section 433 the cases in which assets recognised in a balance sheet of the company are regarded as deriving their value from the matters mentioned in subsection (5)(a) to (e) of that section include any case where—
  - (a) the company's interest in the partnership is recognised in the balance sheet of the company, and
  - (b) that partnership interest derives its value from those matters.
- (3) For the purposes of section 436 the cases in which an entry in respect of an asset is (or would be) recognised in a balance sheet of the company include any case where—
  - (a) the asset is (or would be) recognised in a balance sheet of the partnership, and
  - (b) the company has a significant interest in the partnership.
- (4) For the purposes of section 438(4)—
  - (a) the obligations mentioned there include any case where the obligations are those of the partnership, and
  - (b) references to a qualifying infrastructure company in that case include the partnership.
- (5) Subsections (2) to (4) apply (with any necessary modifications) in relation to transparent entities that are not partnerships as they apply in relation to partnerships.
- (6) For this purpose an entity is “transparent” if it is not chargeable to corporation tax or income tax as a person (ignoring any exemptions).

#### **448 Decommissioning**

- (1) This Chapter applies in relation to an activity consisting of the decommissioning of a public infrastructure asset as it applies in relation to its provision.
- (2) In determining whether a company is a qualifying infrastructure company the following assets of the company are ignored (and the income arising from them is, accordingly, also ignored)—
  - (a) any shares in a decommissioning fund, and
  - (b) any loan relationships or other financing arrangements to which a decommissioning fund is party.
- (3) A decommissioning fund is to be regarded as a qualifying infrastructure company.
- (4) For the purposes of this section “a decommissioning fund” means a fund which—
  - (a) holds particular investments for the sole purpose of funding activities for, or in connection with, the decommissioning or other provision of public infrastructure assets, and
  - (b) is prevented from using the proceeds of the investments, or the income arising from them, for any purpose other than the purpose mentioned in paragraph (a) or returning surplus funds.
- (5) In this section “decommissioning” includes demolishing and putting out of use.

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#### **449 Minor definitions for purposes of this Chapter**

- (1) For the purposes of this Chapter—
- “balance sheet” means a balance sheet that is drawn up in accordance with generally accepted accounting practice,
  - “financial asset” has the same meaning as it has for accounting purposes,
  - “loan relationships or other financing arrangements” means—
    - (a) loan relationships,
    - (b) derivative contracts in relation to which the condition in section 387(4) is met (underlying subject matter to be interest rates etc),
    - (c) finance leases, or
    - (d) debt factoring or similar transactions, and
  - “the UK sector of the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.
- (2) For the purposes of this Chapter references to a company which is “associated” with another company at any time are references to companies that are members of the same worldwide group at that time.

### **CHAPTER 9**

#### CASES INVOLVING PARTICULAR TYPES OF COMPANY OR BUSINESS

##### *Banking companies*

#### **450 Banking companies**

- (1) This section applies in relation to a banking company carrying on a trade so far as the activities of the trade consist of or include dealing in financial instruments.
- (2) For the purposes of section 382 an amount is treated as meeting condition A, B or C if it is a debit arising directly from dealing in financial instruments other than one in respect of an impairment loss.
- (3) An amount—
- (a) which is treated as meeting condition A, B or C for the purposes of section 382 as a result of subsection (2) of this section, and
  - (b) which, but for that subsection, would not be a tax-interest expense amount, is to be left out of account, or brought into account, as a result of section 377(2) or 380(2) after the second but before the third kind of tax-interest expense amounts mentioned there.
- (4) For the purposes of section 385 an amount is treated as meeting condition A, B, C or D if it is a credit arising directly from dealing in financial instruments other than one in respect of the reversal of an impairment loss.
- (5) In determining a relevant expense amount under section 411 in the case of the company, that section has effect as if it also included a reference to losses arising directly from dealing in financial instruments other than impairment losses.

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- (6) In determining a relevant income amount under section 411 in the case of the company, that section has effect as if it also included gains arising directly from dealing in financial instruments other than the reversal of impairment losses.
- (7) In this section—
- “banking company” has the same meaning as in Part 7A of CTA 2010 (see sections 269B to 269BD), and
  - “financial instruments” includes—
    - (a) loan relationships,
    - (b) derivative contracts, and
    - (c) shares or other securities.

### *Oil and gas*

#### **451 Oil and gas**

- (1) For the purposes of this Part any amount which is, or is taken into account in calculating—
- (a) the ring fence income of a company within the meaning of section 275 of CTA 2010, or
  - (b) a company's aggregate gain or loss under section 197(3) of TCGA 1992,
- is to be ignored.
- (2) For the purpose of applying subsection (1) in relation to the financial statements of a worldwide group of which the company is a member such adjustments are to be made to those statements as are just and reasonable.

### *REITs*

#### **452 Real Estate Investment Trusts**

- (1) This section applies if a company (a “property rental business company”)—
- (a) is a company which has profits for an accounting period which are not charged to corporation tax as a result of section 534(1) or (2) of CTA 2010, or
  - (b) is a company to which gains accrue in an accounting period that are not chargeable gains as a result of section 535(1) or (5) of CTA 2010.
- (2) In this section “the residual business company” means the company which—
- (a) so far as it carries on residual business, is treated, as a result of section 541 of CTA 2010, as a separate company distinct from the property rental business company, but
  - (b) ignoring that section, is in fact the same company as the property rental business company.
- (3) In applying the provisions of this Part—
- (a) the property rental business company and the residual business company are at all times to be regarded as separate members of the same worldwide group (despite the provisions of section 541(3) of CTA 2010), but
  - (b) in the case of the application of section 433 (qualifying infrastructure company), the property rental business company and the residual business

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company are to be regarded as being one company (and any election (or its revocation) is, therefore, regarded as made by each company).

(4) This Part has effect as if—

- (a) section 534(1) and (2) of CTA 2010, and
- (b) section 535(1) and (5) of CTA 2010,

do not apply in relation to the property rental business company for the accounting period [<sup>F301</sup>(and, accordingly, the profits mentioned in section 534(1) or (2) of CTA 2010 are not calculated for the purposes of this Part in accordance with section 599 of that Act)].

[ An amount charged on the residual business company as a result of section 543 of <sup>F302</sup>(4A) CTA 2010 (excessive property financing costs) is treated for the purposes of this Part as if it met condition A, B, C or D for the purposes of section 385 (tax-interest income amounts).]

[<sup>F303</sup>(5) The allocated disallowance for the property rental business company (if any) for the accounting period—

- (a) is to be taken into account in calculating the profits of the property rental business for the purposes of section 530 of CTA 2010 (condition as to distribution of profits), but
- (b) must be limited to such amount as secures that neither subsection (3)(b) nor subsection (5) of that section (distribution of profits not required if would result in unlawful distribution) applies.]

(6) This subsection—

- (a) sets out steps to be taken in order to facilitate the operation of Chapter 2 (disallowance and reactivation of tax-interest expense amounts), and
- (b) has effect in relation to an accounting period of the residual business company whether or not it has net tax-interest expense referable to that period.

If the residual business company does not have net tax-interest expense referable to that period, it is treated for the purposes of steps 1 to 4 in the rest of this subsection as if it had instead a nil amount of tax-interest expense referable to that period.

*Step 1* Determine the maximum amount that could be the allocated disallowance for the property rental business company for the accounting period if subsection (5) were ignored and the maximum amount that could be the allocated disallowance for the residual business company for the accounting period (ignoring step 5). The sum of those maximum amounts is referred to in this subsection as “the total REIT expenses”.

*Step 2* Determine the amount (if any) that is the allocated disallowance for the property rental business for the accounting period, applying subsection (5) and all other rules in this Part. This amount is referred to in this subsection as “the actual disallowed amount”.

*Step 3* Deduct from the total REIT expenses the actual disallowed amount.

*Step 4* Determine whether so much of the total REIT expenses as remains after step 3 exceeds the net tax-interest expense of the residual business company referable to the accounting period (ignoring step 5).

*Step 5* If the application of step 4 produces an excess, the residual business company is required to bring into account in the accounting period matching tax-interest expense and income amounts in accordance with the following provisions of this section.



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- (7) The residual business company—
- (a) must bring a tax-interest expense amount equal to the excess into account in the accounting period, and
  - (b) must bring a tax-interest income amount equal to the excess into account in the accounting period,
- but nothing in this subsection affects any calculation required under any other provision of this Part in relation to the accounting period of the residual business company.
- (8) The bringing into account of a tax-interest expense amount under subsection (7) is subject to the operation of the other provisions of this Part (which may result in some or all of the amount not being brought into account).
- (9) The tax-interest expense amount under subsection (7) must be matched in amount and nature to an amount comprised in the total REIT expenses.
- Section 377(2) to (4) (which, subject to an election made by the company, set out the order in which amounts are left out of account) apply for the purposes of this subsection.
- (10) The tax-interest expense or income amounts under subsection (7) are treated as being of the same nature as each other.
- (11) An interest restriction return—
- (a) must, in relation to any company carrying on residual business or property rental business, specify that fact, and
  - (b) must contain information about how the return has taken into account the effect of this section.
- (12) Expressions which are used in this section and in Part 12 of CTA 2010 have the same meaning in this section as they have in that Part.

#### Textual Amendments

**F301** Words in s. 452(4) inserted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 14\(2\)](#)

**F302** S. 452(4A) inserted (retrospectively) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 paras. 14\(3\), 24](#)

**F303** S. 452(5) substituted (with effect in accordance with Sch. 11 para. 22 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 11 para. 14\(4\)](#)

### *Insurance companies etc*

#### 453 Insurance entities

- (1) This section applies where—
- (a) an insurance entity is a member of a worldwide group,
  - (b) the entity has a subsidiary (“S”) which it holds as a portfolio investment, and
  - (c) apart from this section, S would be a member of the group.
- (2) For the purposes of this Part—
- (a) the group does not include S (or its subsidiaries), and

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- (b) accordingly, none of those entities is regarded as a consolidated subsidiary of any member of the group.
- (3) For the purposes of this section an insurance entity holds an interest in an entity as “a portfolio investment” if—
  - (a) the insurance entity holds the interest as an investment, and
  - (b) the insurance entity judges the value that the interest has to it wholly or mainly by reference to the market value of the interest.
- (4) In this section—
  - “insurance entity” means—
    - (a) an insurance company,
    - (b) a friendly society within the meaning of Part 3 of FA 2012 (see section 172), or
    - (c) a body corporate which carries on underwriting business as a member of Lloyd's, and
  - “subsidiary” has the meaning given by international accounting standards.

#### 454 Members of Lloyd's

In the case of a body corporate carrying on underwriting business as a member of Lloyd's—

- (a) any reference in this Part to an amount being brought into account under Part 3 of CTA 2009 as a result of section 297 or 573 of that Act is to be read as a reference to its being brought into account under that Part as a result of section 219 of FA 1994, and
- (b) any reference in this Part to a derivative contract is to be read as if subsection (3) of section 226 of FA 1994 (which provides that relevant contracts forming part of a premium trust fund are not derivative contracts) were omitted.

#### *F<sup>304</sup> Investment managers*

##### **Textual Amendments**

**F304** S. 454A and cross-heading inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 paras. 12, 23\(1\)](#)

#### 454A Investments held by investment managers

- (1) This section applies where—
  - (a) an entity (“S”) is a member of a worldwide group as a result of one or more other members of the group managing S and holding rights or interests in relation to S,
  - (b) the entity managing S does so in the ordinary course of carrying on a business of providing investment management services, and
  - (c) the management of S is not coordinated to any extent with the management by any person of any other entity.
- (2) For the purposes of this Part—

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- (a) the group does not include entities that are subsidiaries of S, and
  - (b) accordingly, none of those entities is regarded as a consolidated subsidiary of any member of the group.
- (3) In this section “subsidiary” has the meaning given by international accounting standards.]

#### *Shipping companies*

### **455 Shipping companies subject to tonnage tax**

- (1) This section applies in relation to an accounting period of a tonnage tax company.
- (2) The company's tonnage tax profits for the accounting period are treated as nil for the purpose of calculating the company's adjusted corporation tax earnings for the accounting period under section 406(2).
- (3) In this section “tonnage tax company” and “tonnage tax profits” have the same meaning as in Schedule 22 to FA 2000 (see paragraphs 2 to 5).

#### *Fair value accounting*

### **456 Creditor relationships of companies determined on basis of fair value accounting**

- (1) A company may elect for all of its creditor relationships which are dealt with on the basis of fair value accounting (“fair-value creditor relationships”) to be subject to the provision made by this section for all of its accounting periods.
- (2) For the purpose of calculating under this Part—
  - (a) tax-interest expense amounts of the company, and
  - (b) tax-interest income amounts of the company,the relevant loan relationship debits and relevant loan relationship credits in respect of the company's fair-value creditor relationships are instead to be determined for the accounting periods on an amortised cost basis of accounting.
- (3) If—
  - (a) a company has a hedging relationship between a relevant contract (“the hedging instrument”) and the asset representing a loan relationship subject to the election, and
  - (b) the loan relationship is dealt with in the company's accounts on the basis of fair value accounting,it is to be assumed in applying the amortised cost basis of accounting that the hedging instrument has where possible been designated for accounting purposes as a fair value hedge of the loan relationship.
- (4) An election under this section—
  - (a) must be made before the end of 12 months from the end of the relevant accounting period,
  - (b) has effect for that accounting period and all subsequent accounting periods, and
  - (c) is irrevocable.

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- (5) For this purpose “relevant accounting period” means—
- (a) the first accounting period in which the company has a fair-value creditor relationship, or
  - (b) if that accounting period has ended before 1 April 2017, the first accounting period in relation to which any provision of this Part applies.
- (6) In this section “amortised cost basis of accounting”, in relation to an accounting period, has the same meaning as in Part 5 of CTA 2009 (see section 313), but, in the case of creditor relationships relating to insurance activities, as if that basis of accounting required recognition only of—
- (a) interest accrued for the period in respect of the creditor relationships, or
  - (b) if the creditor relationships arise as a result of section 490 of CTA 2009 (OEICs, unit trusts and offshore funds), amounts that can reasonably be regarded as equating to interest accrued for the period in respect of those relationships.
- (7) In subsection (6) “creditor relationships relating to insurance activities” means creditor relationships which—
- (a) are held by an insurance company, a friendly society within the meaning of Part 3 of FA 2012 (see section 172) or a body corporate which carries on underwriting business as a member of Lloyd's, or
  - (b) are held in connection with the regulation of underwriting business carried on by members of Lloyd's.
- (8) The Commissioners may by regulations amend the definition of “amortised cost basis of accounting” in this section.
- (9) Other expressions which are used in this section and in Part 5 of CTA 2009 have the same meaning in this section as they have in that Part.

#### **457 Elections under section 456: deemed debits and credits**

- (1) This section applies if—
- (a) as a result of an election under section 456, the tax-interest expense amounts of a company include notional debits for an accounting period,
  - (b) the worldwide group of which the company is a member is subject to interest restrictions for a period of account, and
  - (c) the total disallowed amount for the period of account consists of or includes the notional debits.
- (2) In order to facilitate the operation of Chapter 2 (disallowance and reactivation of tax-interest expense amounts)—
- (a) the company must bring a debit equal to the amount of the notional debits into account in the accounting period, and
  - (b) the company must bring a credit equal to the amount of the notional debits into account in the accounting period,
- but nothing in this subsection affects any calculation required under any other provision of this Part in relation to the accounting period of the company.
- (3) The bringing into account of a debit under subsection (2)(a) is subject to the operation of the other provisions of this Part (which may result in some or all of the debit not being brought into account).

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- (4) The debits and credits under subsection (2) are of the same nature as the notional debits that give rise to them.
- (5) For the purposes of this section a debit is a “notional debit” if the debit is created as a result of the determination required by the election or so far as the amount of the debit is increased as a result of that determination.

*Exemption for tax-interest expense or income amounts*

**458 Co-operative and community benefit societies etc**

- (1) This section applies where—
  - (a) apart from this section, an amount would be a tax-interest expense amount or tax-interest income amount of a company as a result of meeting condition A in section 382 or 385 (loan relationships), and
  - (b) the amount meets that condition only because of section 499 of CTA 2009 (certain sums payable by co-operative and community benefit societies or UK agricultural or fishing co-operatives treated as interest under loan relationship).
- (2) The amount is treated as not being a tax-interest expense amount or tax-interest income amount of the company.

**459 Charities**

- (1) This section applies where—
  - (a) apart from this section, an amount would be a tax-interest expense amount of a company as a result of meeting condition A in section 382 (loan relationship debits),
  - (b) the creditor is a charity,
  - (c) the company is a wholly-owned subsidiary of the charity, and
  - (d) the charitable gift condition is met at all times during the accounting period in which the amount is (or apart from this Part would be) brought into account.
- (2) The amount is treated as not being a tax-interest expense amount of the company.
- (3) For the purposes of this section the “charitable gift condition” is met at any time at which, were the company to make a donation to the charity at that time, it would be a qualifying charitable donation (see section 190 of CTA 2010).
- (4) In this section—

“charity” has the same meaning as in Chapter 2 of Part 6 of CTA 2010 (see section 202 of that Act as read with Schedule 6 to FA 2010), and

“the creditor” means the person who is party to the loan relationship in question as creditor.

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## *Leases*

### **460 Long funding operating leases and finance leases**

- (1) In calculating a company's adjusted corporation tax earnings for an accounting period under section 406(2), each of the following amounts is to be ignored—
  - (a) the amount of a deduction under section 363 of CTA 2010 (lessor under long funding operating lease);
  - (b) the amount by which a deduction is reduced under section 379 of CTA 2010 (lessee under long funding operating lease);
  - (c) the capital component of the company's rental earnings under a finance lease which is not a long funding finance lease;
  - (d) the amount of depreciation in respect of any asset leased to the company under a finance lease which is not a long funding finance lease.
- (2) The definition of “relevant capital expenditure” in section 417(2) includes the amount of depreciation in respect of any relevant asset leased under a finance lease for some or all of the relevant period of account to a company that is a member of the worldwide group in question.
- (3) For the purposes of this section the capital component of a company's rental earnings under a finance lease is so much of those earnings as do not constitute tax-interest income amounts of the company.
- (4) For the purposes of this section the amount of depreciation in respect of any asset leased to a company under a finance lease is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be shown as depreciation in respect of the asset in the applicable accounts.
- (5) In this section “the applicable accounts” are—
  - (a) in a case within subsection (1)(d), the company's accounts for any period, and
  - (b) in a case within subsection (2), the financial statements of the worldwide group for the relevant period of account in question.
- (6) In this section “long funding finance lease” means a finance lease which is a long funding lease (within the meaning of section 70G of CAA 2001).

## **CHAPTER 10**

### ANTI-AVOIDANCE

### **461 Counteracting effect of avoidance arrangements**

- (1) Any tax advantage that would (in the absence of this section) arise from relevant avoidance arrangements is to be counteracted by the making of such adjustments as are just and reasonable.
- (2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim or otherwise.
- (3) For the purposes of this section arrangements are “relevant avoidance arrangements” if conditions A and B are met.

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- (4) Condition A is that the main purpose, or one of the main purposes, of the arrangements is to enable a company to obtain a tax advantage.
- (5) Condition B is that the tax advantage is attributable (or partly attributable) to any company—
- (a) not leaving tax-interest expense amounts out of account that it otherwise would have left out of account,
  - (b) leaving tax-interest expense amounts out of account that are lower than they otherwise would have been,
  - (c) leaving tax-interest expense amounts out of account in an accounting period other than that in which it otherwise would have left them out of account,
  - (d) bringing tax-interest expense amounts into account that it otherwise would not have brought into account,
  - (e) bringing tax-interest expense amounts into account that are higher than they otherwise would have been, or
  - (f) bringing tax-interest expense amounts into account in an accounting period other than that in which it otherwise would have brought them into account.
- (6) In subsection (5)—
- (a) references to leaving amounts out of account are to leaving them out of account under this Part;
  - (b) references to bringing amounts into account are to bringing them into account under this Part.
- (7) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
- “tax advantage” includes—
- (a) relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax,
  - (e) deferral of a payment of tax or advancement of a repayment of tax, and
  - (f) avoidance of an obligation to deduct or account for tax.
- (8) For the purposes of the definition of “tax advantage” any reference to tax includes—
- (a) any amount chargeable as if it were corporation tax or treated as if it were corporation tax, and
  - (b) diverted profits tax.

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## CHAPTER 11

### INTERPRETATION ETC

#### *Related parties*

#### **462 Expressions relating to “related parties”: introduction**

- (1) Section 463 sets out the circumstances in which a person is a related party of another person for the purposes of this Part.
- (2) That section—
  - (a) applies generally in relation to any amount, and
  - (b) is supplemented by sections 464 and 465 (which contain provisions that have effect for the purposes of that section).
- (3) Sections 466 and 467 make provision for treating persons as if they were related parties of each other but only in relation to certain matters.
- (4) Sections 468 to 472—
  - (a) make provision for treating persons as if they were not related parties of each other but only in relation to certain matters, and
  - (b) take priority over sections 466 and 467.

#### **463 Whether a person is generally a “related party” of another**

- (1) For the purposes of this Part a person (“A”) is a “related party” of another person (“B”)—
  - (a) throughout any period for which A and B are consolidated for accounting purposes,
  - (b) on any day on which the participation condition is met in relation to them, or
  - (c) on any day on which the 25% investment condition is met in relation to them.
- (2) A and B are consolidated for accounting purposes for a period if—
  - (a) their financial results for a period are required to be comprised in group accounts,
  - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
  - (c) their financial results for a period are in fact comprised in group accounts.
- (3) In subsection (2) “group accounts” means accounts prepared under—
  - (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) The participation condition is met in relation to A and B (“the relevant parties”) on a day if, within the period of 6 months beginning or ending with that day—
  - (a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or
  - (b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.



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- (5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in that subsection to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).
- (6) If one of the relevant parties is a securitisation company within the meaning of Chapter 4 of Part 13 of CTA 2010, the relevant parties are not to be regarded as related parties of each other as a result of subsection (4) merely by reference to the fact that—
  - (a) the securitisation company is held by a trustee of a settlement, and
  - (b) the other relevant party is a settlor in relation to that settlement.
- (7) The 25% investment condition is met in relation to A and B if—
  - (a) one of them has a 25% investment in the other, or
  - (b) a third person has a 25% investment in each of them.
- (8) Sections 464 and 465 apply for the purpose of determining whether a person has a “25% investment” in another person.

#### **464 Meaning of “25% investment”**

- (1) A person (“P”) has a 25% investment in another person (“C”) if—
  - (a) P possesses or is entitled to acquire 25% or more of the voting power in C,
  - (b) in the event of a disposal of the whole of the equity in C, P would receive 25% or more of the proceeds,
  - (c) in the event that the income in respect of the equity in C were distributed among the equity holders in C, P would receive 25% or more of the amount so distributed, or
  - (d) in the event of a winding-up of C or in any other circumstances, P would receive 25% or more of C's assets which would then be available for distribution among the equity holders in C in respect of the equity in C.
- (2) In this section references to the equity in C are to—
  - (a) the shares in C other than restricted preference shares, or
  - (b) loans to C other than normal commercial loans.
- (3) For this purpose “shares in C” includes—
  - (a) stock, and
  - (b) any other interests of members in C.
- (4) For the purposes of this section a person is an equity holder in C if the person possesses any of the equity in C.
- (5) For the purposes of this section—

“normal commercial loan” means a loan which is a normal commercial loan for the purposes of section 158(1)(b) or 159(4)(b) of CTA 2010, and

“restricted preference shares” means shares which are restricted preference shares for the purposes of section 160 of CTA 2010.
- (6) In applying for the purposes of this section the definitions of “normal commercial loan” and “restricted preference shares” in a case where—
  - (a) C is not a company, or
  - (b) C is a company which does not have share capital,

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sections 160(2) to (7) and 161 to 164 of CTA 2010 (and any other relevant provisions of that Act) have effect with the necessary modifications.

(7) In this section references to a person receiving any proceeds, amount or assets include—

- (a) the direct or indirect receipt of the proceeds, amount or assets, and
- (b) the direct or indirect application of the proceeds, amount or assets for the person's benefit,

and it does not matter whether the receipt or application is at the time of the disposal, distribution, winding-up or other circumstances or at a later time.

(8) If—

- (a) there is a direct receipt or direct application of any proceeds, amount or assets by or for the benefit of a person (“A”), and
- (b) another person (“B”) directly or indirectly owns a percentage of the equity in A,

there is, for the purposes of subsection (7), an indirect receipt or indirect application of that percentage of the proceeds, amount or assets by or for the benefit of B.

(9) For this purpose the percentage of the equity in A directly or indirectly owned by B is to be determined by applying the rules in sections 1155 to 1157 of CTA 2010 with such modifications (if any) as may be necessary.

(10) Subsection (7) is not to result in a person being regarded as having a 25% investment in another person merely as a result of their being parties to a normal commercial loan.

(11) Any reference in this section, in the case of a person who is a member of a partnership, to the proceeds, amount or assets of the person includes the person's share of the proceeds, amount or assets of the partnership (apportioning those things between the partners on a just and reasonable basis).

#### **Modifications etc. (not altering text)**

**C49** S. 464(2)-(11) applied by 2005 c. 5, s. 608U(3)(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 3 para. 4](#))

## **465 Attribution of rights and interests**

(1) In determining for the purposes of section 464 the investment that a person (“P”) has in another person, P is to be taken to have all of the rights and interests of—

- (a) any person connected with P,
- (b) any person who is a member of a partnership, or is connected with a person who is member of a partnership, of which P is a member, or
- (c) any person who is a member of a partnership, or is connected with a person who is a member of a partnership, of which a person connected with P is a member.

(2) For the purposes of subsection (1)—

- (a) section 1122 of CTA 2010 (“connected” persons) applies but as if subsections (7) and (8) of that section were omitted, but

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- (b) a person is not to be regarded as connected with another person merely as a result of their being parties to a loan that is a normal commercial loan for the purposes of section 464.
- (3) In determining for the purposes of section 464 the investment that a person (“P”) has in another person (“U”), P is to be taken to have all of the rights and interests of a third person (“T”) with whom P acts together in relation to U.
- (4) For this purpose P “acts together” with T in relation to U if (and only if)—
  - (a) for the purpose of influencing the conduct of U's affairs—
    - (i) P is able to secure that T acts in accordance with P's wishes (or vice versa), or
    - (ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes (or vice versa),
  - (b) P and T are party to an arrangement that it is reasonable to conclude is designed to affect the value of any equity in U possessed by T, or
  - (c) the same person manages some or all of any equity in U possessed by P and T.

In paragraphs (b) and (c) references to equity in U are to be read in accordance with section 464.
- (5) But P does not “act together” with T in relation to U under subsection (4)(c) if—
  - (a) the managing person does so as the operator of different collective investment schemes, and
  - (b) the management of the schemes is not coordinated for the purpose of influencing the conduct of U's affairs.
- (6) For this purpose “collective investment scheme” and “operator” have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237).
- (7) In determining for the purposes of section 464 the investment that a person (“P”) has in another person (“U”), P is to be taken to have all of the rights and interests of one or more third persons with whom P has entered into a qualifying arrangement in relation to U.
- (8) For this purpose P has entered into a qualifying arrangement with one or more third persons in relation to U if they are parties to an arrangement concerning U as a result of which, by reference to shares held, or to be held, by any one or more of them in U, they can reasonably be expected to act together—
  - (a) so as to exert greater influence in relation to U than any one of them would be able to exert if acting alone, or
  - (b) otherwise so as to be able to achieve an outcome in relation to U that, if attempted by any one of them acting alone, would be significantly more difficult to achieve.
- (9) For this purpose the reference to shares in U includes shares in U that may be held as a result of the exercise of any right or power and includes rights or interests in U that are of a similar character to shares.
- (10) In this section “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

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#### **Modifications etc. (not altering text)**

**C50** S. 465 applied by 2005 c. 5, s. 608U(3)(4) (as inserted (with effect in accordance with Sch. 3 para. 7 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 3 para. 4](#))

### **466 Certain loan relationships etc to be treated as made between related parties**

(1) This section—

- (a) makes provision for treating a person (“D”) who is not a related party of another person (“C”) as if they were related parties of each other but only in respect of particular liabilities or transactions, and
- (b) is expressed to apply in relation to loan relationships but also applies (with any necessary modifications) in relation to any other financial liability owed to, or any transaction with, C.

(2) If at any time—

- (a) D is party to a loan relationship as debtor and C is party to the relationship as creditor, and
- (b) another person (“G”) who is a related party of D provides a guarantee, indemnity or other financial assistance in respect of the liability of D that represents the loan relationship,

D and C are treated for the purposes of this Part as if, in relation to the loan relationship concerned (and anything done under or for the purposes of it), they were related parties of each other at that time.

(3) Subsection (2) is subject to—

- (a) section 415 (qualifying net group-interest expense), and
- (b) section 438(3) (infrastructure: interest payable to third parties etc).

(4) If at any time—

- (a) D is party to a loan relationship as debtor and C is party to the relationship as creditor, and
- (b) another person (“G”) who is a related party of D indirectly stands in the position of a creditor as respects the debt in question by reference to a series of loan relationships or other arrangements,

D and C are treated for the purposes of this Part as if, in relation to the loan relationship concerned (and anything done under or for the purposes of it), they were related parties of each other at that time.

(5) For the purposes of this section “arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

### **467 Holdings of debt and equity in same proportions**

(1) This section applies at any time where—

- (a) persons have lent money to another person (“U”),
- (b) the lenders also have shares or voting power in U,
- (c) the amounts each of the lenders has lent stand in the same, or substantially the same, proportion as the shares or voting power in U that each of them has, and

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- (d) for the purposes of section 464 the lenders (taken together) have a 25% investment in U.
- (2) The lenders are treated for the purposes of this Part as if, in relation to the loans (and anything done under or for the purposes of them), they were related parties of U at that time (so far as that would not otherwise be the case).
- (3) If—
  - (a) some or all of the rights under the loan are transferred, and
  - (b) the transferred rights are held by, or for the benefit of, another person (“the transferee”) at any time,  
the transferee is treated for the purposes of this Part as if, in relation to the loan (and anything done under or for the purposes of it), the transferee were a related party of U at that time (so far as that would not otherwise be the case).
- (4) This applies whether or not the transferee has any shares or voting power in U.
- (5) For the purposes of this section references to shares in U include shares in U that may be held as a result of the exercise of any right or power and include rights or interests in U that are of a similar character to shares.
- (6) This section applies (with any necessary modifications) in relation to any other financial liability owed to, or any transaction with, U as it applies to loans made to U.

#### **468 Debts with same rights where unrelated parties hold more than 50%**

- (1) This section applies if—
  - (a) a person (“D”) is party to a loan relationship as debtor in a period of account of a worldwide group of which it is a member,
  - (b) a person (“C”) who is party to the loan relationship as creditor is a related party of D at any time in that period,
  - (c) there are persons (“the relevant creditors”) other than C who are parties to the loan relationship, or are parties to other loan relationships entered into at the same time, as creditors but who are not related parties of D at any time in that period,
  - (d) at all times in that period the rights of the relevant creditors are rights in relation to at least 50% of the total amount of the money debt or debts in question, and
  - (e) at all times in that period C and the relevant creditors have the same rights in relation to the money debt or debts in question.
- (2) D and C are treated for the purposes of this Part as if, in relation to the loan relationship concerned (and anything done under or for the purposes of it), they were not related parties of each other at any time in that period.
- (3) Persons are not to be regarded as having the same rights in relation to a money debt or debts at any time if—
  - (a) the terms or conditions on which any of the money is lent and which are in force at that time make different provision in relation to different persons or have, or are capable of having, a different effect in relation to different persons (whether at that or any subsequent time),
  - (b) arrangements are in place at that time the effect of which is that, at that or any subsequent time, the rights of some persons in relation to any of the debts

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differ, or will or may differ, from the rights of others in relation to any of the debts, or

- (c) any other circumstances exist at that time as a result of which the rights of some persons in relation to any of the debts cannot reasonably be regarded as being, in substance, the same rights as others in relation any of the debts at that or any subsequent time.

- (4) For the purposes of this section—

“arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

“different persons” includes persons of a different class or description, and

“rights” includes powers.

#### **469 Debt restructuring**

- (1) This section—

- (a) makes provision for treating a person (“D”) who is a related party of another person (“C”) as if they were not related parties of each other but only in respect of particular liabilities or transactions, and
- (b) is expressed to apply in relation to loan relationships but also applies (with any necessary modifications) in relation to any other financial liability owed to, or any transaction with, C.

- (2) If—

- (a) D is party to a loan relationship as debtor and C is party to the loan relationship as creditor,
- (b) D subsequently becomes a related party of C in consequence of a relevant release of debt, and
- (c) before D became a related party of C in consequence of the release none of the parties to the loan relationship had been related parties of each other,

D and C are treated for the purposes of this Part as if, in relation to the loan relationship (and anything done under or for the purposes of it), they were not related parties of each other at times on or after the release.

- (3) There is a “relevant release of debt” at any time for the purposes of this section if—

- (a) a liability to pay an amount under a person's debtor relationship is released under the arrangements,
- (b) that person is D or a person who is a related party of D at that time, and
- (c) immediately before the release, it is reasonable to conclude that, without the release and any arrangements of which the release forms part, there would be a material risk that, at some time within the next 12 months, D or the related party would be unable to pay its debts.

- (4) For the purposes of this section “debtor relationship” has the meaning given by section 302(6) of CTA 2009 (reading the references in that subsection to a company as references to a person).

#### **470 Ordinary independent financing arrangements by banks and others**

- (1) This section applies where—

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- (a) at any time, a person (“C”) is party to a loan relationship as creditor and the party to the loan relationship as debtor (“D”) is a related party of C as a result of any circumstances, and
  - (b) the loan relationship is not one to which C is a party at that time directly or indirectly in consequence of, or otherwise in connection with, the existence of any of those circumstances.
- (2) C and D are treated for the purposes of this Part as if, in relation to the loan relationship (and anything done under or for the purposes of it), they were not related parties of each other at that time.

#### **471 Loans made by relevant public bodies**

- (1) This section applies at any time where—
- (a) a relevant public body (“B”) lends money to a person (“P”),
  - (b) B is a related party of P, and
  - (c) the realising of a profit is merely incidental to the making of the loan.
- (2) B and P are treated for the purposes of this Part as if, in relation to the loan (and anything done under or for the purposes of it), they were not related parties of each other at that time.

#### **472 Finance leases granted before 20 March 2017**

- (1) This section applies at any time where an asset is leased by a person (“A”) to another (“B”) under a lease which is granted before 20 March 2017 and which, in the case of B, is a finance lease.
- (2) A and B are treated for the purposes of this Part as if, in relation to the lease (and anything done under or for the purposes of it), they were not related parties of each other at that time.

#### *Determining the worldwide group*

#### **473 Meaning of “a worldwide group”, “ultimate parent” etc**

- (1) In this Part “a worldwide group” means—
- (a) any entity which—
    - (i) is a relevant entity (see section 474), and
    - (ii) meets the first or second non-consolidation condition (see subsections (2) and (3)), and
  - (b) each consolidated subsidiary (if any) of the entity mentioned in paragraph (a).
- (2) The first non-consolidation condition is that the entity—
- (a) is a member of an IAS group, and
  - (b) is not a consolidated subsidiary of an entity that—
    - (i) is a relevant entity, and
    - (ii) itself meets the first non-consolidation condition.
- (3) The second non-consolidation condition is that the entity is not a member of an IAS group.

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(4) In this Part—

- (a) references to “a member” of a worldwide group are to an entity mentioned in subsection (1)(a) or (b);
- (b) references to “the ultimate parent” of a worldwide group are to the entity mentioned in subsection (1)(a);
- (c) references to “a single-company worldwide group” are to a worldwide group whose only member is its ultimate parent;
- (d) references to “a multi-company worldwide group” are to a worldwide group with two or more members.

(5) In this section “IAS group” means a group within the meaning given by international accounting standards.

**474 Interpretation of section 473: “relevant entity”**

(1) In section 473 “relevant entity” means—

- (a) a company, or
- (b) an entity the shares or other interests in which are listed on a recognised stock exchange and are sufficiently widely held.

(2) Shares or other interests in an entity are “sufficiently widely held” if no participator in the entity holds more than 10% by value of all the shares or other interests in the entity.

Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this subsection.

(3) The following are not relevant entities—

- (a) the Crown,
- (b) a Minister of the Crown,
- (c) a government department,
- (d) a Northern Ireland department, or
- (e) a foreign sovereign power.

**475 Meaning of “non-consolidated subsidiary” and “consolidated subsidiary”**

(1) An entity (“X”) is a “non-consolidated subsidiary” of another entity (“Y”) at any time (“the relevant time”) if—

- (a) X is a subsidiary of Y at the relevant time, and
- (b) if Y were required at the relevant time to measure its investment in X, it would be required to do so using fair value accounting [<sup>F305</sup>or on the basis that X were an asset held for sale or held for distribution to owners].

(2) An entity (“X”) is a “consolidated subsidiary” of another entity (“Y”) at any time if, at that time, X is a subsidiary, but not a non-consolidated subsidiary, of Y.

[<sup>F306</sup>(3) In this section each of the following expressions has the meaning given by international accounting standards—

“held for distribution to owners”

“held for sale”

“subsidiary”.]



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- (4) For the purposes of this section, assume that all entities are subject to international accounting standards.
- (5) This section has effect for the purposes of this Part.

#### Textual Amendments

- F305** Words in s. 475(1)(b) inserted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 13\(2\)](#)
- F306** S. 475(3) substituted (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 8 para. 13\(3\)](#)

### 476 Continuity of identity of a worldwide group through time

- (1) This section applies for the purpose of determining whether a group of entities that constitutes a worldwide group at any time (“Time 2”) is the same worldwide group as a group of entities that constitutes a worldwide group at an earlier time (“Time 1”).
- (2) The group at Time 2 is the same worldwide group as the group at Time 1 if and only if the entity that is the ultimate parent of the group at Time 2—
  - (a) was the ultimate parent of the group at Time 1, and
  - (b) was the ultimate parent of a worldwide group at all times between Time 1 and Time 2.

### 477 Treatment of stapled entities

- (1) This section applies where two or more entities—
  - (a) would, apart from this section, each be the ultimate parent of a worldwide group, and
  - (b) are stapled to each other.
- (2) This Part has effect as if—
  - (a) the entities were consolidated subsidiaries of another entity (the “deemed parent”), and
  - (b) the deemed parent fell within section 473(1)(a) (conditions for being the ultimate parent of a worldwide group).
- (3) For the purpose of this section an entity (“entity A”) is “stapled” to another entity (“entity B”) if, in consequence of the nature of the rights attaching to the shares or other interests in entity A (including any terms or conditions attaching to the right to transfer the interests), it is necessary or advantageous for a person who has, disposes of or acquires shares or other interests in entity A also to have, dispose of or acquire shares or other interests in entity B.

### 478 Treatment of business combinations

- (1) This section applies where two entities—
  - (a) would, apart from this section, each be the ultimate parent of a worldwide group, and
  - (b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.

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- (2) This Part has effect as if—
- (a) the two entities were consolidated subsidiaries of another entity (the “deemed parent”), and
  - (b) the deemed parent fell within section 473(1)(a) (conditions for being the ultimate parent of a worldwide group).
- (3) In this section “business combination” has the meaning given by international accounting standards.

### *Financial statements and periods of account*

#### **479 “Financial statements” of a worldwide group**

- (1) References in this Part to “financial statements” of a worldwide group for a period are (subject to subsection (2)) to consolidated financial statements of the worldwide group's ultimate parent and its subsidiaries in respect of the period.
- (2) Where the worldwide group is at all times during the period a single-company worldwide group, the references are to financial statements of the ultimate parent in respect of the period.
- (3) The basic rule is that the references mentioned in subsections (1) and (2) are to financial statements that are drawn up by or on behalf of the ultimate parent.
- (4) But see—
  - (a) section 481 for provision under which, in specified circumstances, financial statements of a worldwide group are treated as having been drawn up in accordance with different accounting standards from those in accordance with which they are drawn up by or on behalf of the ultimate parent;
  - (b) section 482 for provision under which, in specified circumstances, financial statements of a worldwide group are treated as consolidating different subsidiaries from those consolidated in financial statements drawn up by or on behalf of the ultimate parent;
  - (c) section 483 for provision under which, in specified circumstances, financial statements of a worldwide group are treated as having been drawn up where the ultimate parent has drawn up consolidated financial statements covering more than one worldwide group;
  - (d) sections 484 to 486 for provision under which, where financial statements of a worldwide group are not drawn up by or on behalf of the ultimate parent, financial statements of the group are treated as having been drawn up.
- (5) See also section 487 (under which financial statements drawn up by or on behalf of an entity, but for too long a period or too late, are ignored for the purposes of this Part).

#### **480 “Period of account” of worldwide group**

References in this Part to a “period of account” of a worldwide group are to—

- (a) a period in respect of which financial statements of the group are drawn up by or on behalf of the ultimate parent, or
- (b) a period in respect of which financial statements of the group are treated as drawn up for the purposes of this section (whether under any of sections 481 to 485 or under any other enactment).

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#### **481 Actual financial statements not drawn up on acceptable principles**

- (1) This section applies where financial statements of a worldwide group for a period drawn up by or on behalf of the ultimate parent are not drawn up on acceptable principles.
- (2) For the purposes of this Part (apart from this section)—
  - (a) the financial statements mentioned in subsection (1) are to be ignored, and
  - (b) IAS financial statements of the worldwide group are treated as having been drawn up in respect of the period.
- (3) For the purposes of this Chapter financial statements are “drawn up on acceptable principles” only if condition A, B, C or D is met.
- (4) Condition A is that the financial statements are IAS financial statements.
- (5) Condition B is that the amounts recognised in the financial statements are not materially different from those that would be recognised in IAS financial statements of the worldwide group, if such statements were drawn up.
- (6) Condition C is that the financial statements are drawn up in accordance with UK generally accepted accounting practice.
- (7) Condition D is that the financial statements are drawn up in accordance with generally accepted accounting principles and practice of one of the following territories—
  - (a) Canada;
  - (b) China;
  - (c) India;
  - (d) Japan;
  - (e) South Korea;
  - (f) the United States of America.
- (8) The Commissioners may by regulations amend this section so as to alter the circumstances in which financial statements are “drawn up on acceptable principles” for the purposes of this Chapter.

#### **482 Actual financial statements drawn up on acceptable principles but consolidating wrong subsidiaries**

- (1) This section applies where financial statements of a worldwide group for a period drawn up by or on behalf of the ultimate parent are drawn up on acceptable principles but—
  - (a) do not consolidate one or more entities that are IAS subsidiaries, or
  - (b) consolidate one or more entities that are not IAS subsidiaries.
- (2) In this section “IAS subsidiary”, in relation to a period, means an entity which would be required to be consolidated with those of the ultimate parent in IAS financial statements of the group for the period.
- (3) For the purposes of this Part (apart from this section)—
  - (a) the financial statements mentioned in subsection (1) are to be ignored, and
  - (b) consolidated financial statements of the ultimate parent and its IAS subsidiaries are treated as having been drawn up in respect of the period.

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- (4) The financial statements treated by subsection (3)(b) as drawn up are treated as drawn up in accordance with the same accounting principles and practice as the financial statements mentioned in subsection (1).
- (5) In this section a reference to financial statements consolidating the results of an entity is to consolidating its results with those of the ultimate parent as the results of a single economic entity.

#### **483 Actual financial statements covering more than one worldwide group**

- (1) This section applies where—
  - (a) consolidated financial statements of an entity and its subsidiaries are drawn up by or on behalf of the entity in respect of a period (“the actual period of account”), and
  - (b) the entity was the ultimate parent of a worldwide group for a part (but not all) of that period.
- (2) For the purposes of this Part (apart from this section)—
  - (a) the financial statements mentioned in subsection (1)(a) are to be ignored, and
  - (b) consolidated financial statements of the entity and its IAS subsidiaries are treated as having been drawn up in respect of the part of the actual period of account mentioned in subsection (1)(b).
- (3) The financial statements treated by subsection (2)(b) as drawn up are treated as drawn up—
  - (a) where the financial statements mentioned in subsection (1)(a) are drawn up on acceptable principles, in accordance with the same accounting principles and practice as those financial statements;
  - (b) otherwise, in accordance with international accounting standards.
- (4) In this section “IAS subsidiary” has the same meaning as in section 482.

#### **484 No actual financial statements: ultimate parent draws up financial statements**

- (1) Subsection (2) applies where—
  - (a) financial statements of the ultimate parent of a worldwide group are drawn up by or on behalf of the ultimate parent in respect of a period (“the relevant period”),
  - (b) consolidated financial statements of the ultimate parent and its subsidiaries are not drawn up by or on behalf of the ultimate parent in respect of the relevant period or any part of it, and
  - (c) the group was, at any time during the relevant period, a multi-company worldwide group.
- (2) For the purposes of this Part (apart from this section) IAS financial statements of the worldwide group are treated as drawn up in respect of the relevant period.
- (3) The ultimate parent may elect that subsection (2) is not to apply in relation to financial statements of the ultimate parent.
- (4) An election under subsection (3)—

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- (a) has effect in relation to financial statements in respect of periods ending on or after such date as is specified in the election, and
  - (b) is irrevocable.
- (5) The date specified in the election may not be before the day on which the election is made.

#### **485 No actual financial statements: other cases**

- (1) In this section “accounts-free period” means (subject to subsection (2)) any period—
- (a) which begins on or after 1 April 2017,
  - (b) throughout which a worldwide group exists, and
  - (c) in respect of no part of which are financial statements of the group—
    - (i) drawn up by or on behalf of the ultimate parent, or
    - (ii) treated as drawn up for the purposes of this section (whether under section 481, 482, 483 or 484 or any other enactment).
- (2) A period is not an “accounts-free period” if it forms part of an accounts-free period.
- (3) If an accounts-free period in relation to a worldwide group is 12 months or less, IAS financial statements of the worldwide group are treated for the purposes of this Part (apart from this section) as having been drawn up for the accounts-free period.
- (4) If an accounts-free period in relation to a worldwide group is more than 12 months, IAS financial statements of the worldwide group are treated for the purposes of this Part (apart from this section) as having been drawn up for each of the following periods—
- (a) the first period of 12 months falling within the accounts-free period;
  - (b) any subsequent period of 12 months falling within the accounts-free period;
  - (c) any period of less than 12 months which—
    - (i) begins immediately after the end of a period mentioned in paragraph (a) or (b), and
    - (ii) ends at the end of the accounts-free period.

#### **486 Election altering period of account deemed under section 485**

- (1) This section applies where, disregarding this section, IAS financial statements of a worldwide group would be treated under section 485(4)(a) or (b) as drawn up for a period (“the default period of account”) during an accounts-free period.
- (2) The ultimate parent of the group may make an election under this section in relation to the default period of account.
- (3) Where an election under this section is made, section 485 has effect as if subsection (4) (a) or (b) of that section—
- (a) did not treat IAS financial statements of the group as having been drawn up for the default period of account;
  - (b) instead, treated IAS financial statements of the group as having been drawn up for the period—
    - (i) beginning with the day on which the default period of account begins (“the start day”), and

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- (ii) ending with such day after the start day as is specified in the election (“the end day”).
- (4) The end day must—
  - (a) fall within the accounts-free period, and
  - (b) not be later than the final day of the period of 18 months beginning with the start day.
- (5) An election under this section—
  - (a) must be made before the end day, and
  - (b) is irrevocable.
- (6) The fact that the ultimate parent of a worldwide group makes an election under this section in relation to a default period of account (“the earlier elected period”) does not prevent it from making an election in relation to a later default period of account (“the later elected period”).
- (7) But where it does so, the end day in relation to the later elected period must be 3 years or more after the end day in relation to the earlier elected period.
- (8) Where this section modifies section 485(4)(a) or (b) so that it treats IAS financial statements of the group as having been drawn up for the period mentioned in subsection (3)(b) of this section (“the elected period”), section 485(4)(b) and (c) apply in relation to any part of the accounts-free period following the end of the elected period.
- (9) In this section “accounts-free period” has the same meaning as in section 485.

#### **487 Actual financial statements ignored if for too long a period or too late**

Financial statements drawn up by or on behalf of any entity are to be ignored for the purposes of this Part (apart from this section) if—

- (a) the period in respect of which they are drawn up is more than 18 months, or
- (b) they are drawn up after the end of the period of 30 months beginning with the beginning of the period in respect of which they are drawn up.

#### **488 Meaning of “IAS financial statements”**

- (1) References in this Part to “IAS financial statements” of a worldwide group for a period are (subject to subsection (2)) to consolidated financial statements of the worldwide group's ultimate parent and its subsidiaries, drawn up in respect of the period in accordance with international accounting standards.
- (2) If the worldwide group is at all times during the period a single-company worldwide group, the references are instead to financial statements of the ultimate parent, drawn up in respect of the period in accordance with international accounting standards.

#### **489 References to amounts recognised in financial statements**

- (1) References in this Part to an amount “recognised” in financial statements—
  - (a) include an amount comprised in an amount so recognised;
  - (b) are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent.

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- (2) The exchange rate by reference to which an amount is to be translated under subsection (1)(b) is the average rate of exchange for the period of account, calculated from daily spot rates.
- (3) References in this Part to an amount recognised in financial statements “for a period” as an item of profit or loss include references to an amount that—
  - (a) was previously recognised as an item of other comprehensive income, and
  - (b) is transferred to become an item of profit or loss in determining the profit or loss for the period.

#### *Other definitions*

#### **490 Meaning of “relevant accounting period”**

For the purposes of this Part a “relevant accounting period” of a company, in relation to a period of account of a worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

#### **491 Meaning of “relevant public body”**

- (1) In this Part “relevant public body” means—
  - (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department,
  - (e) a foreign sovereign power,
  - (f) a designated educational establishment (within the meaning given by section 106 of CTA 2009),
  - (g) a health service body (within the meaning given by section 986 of CTA 2010),
  - (h) a local authority or local authority association,
  - (i) any other body that acts under any enactment for public purposes and not for its own profit, or
  - (j) any wholly-owned subsidiary of any body falling within any of the above paragraphs of this subsection.
- (2) In this section “enactment” includes—
  - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (3) The Commissioners may by regulations amend this section so as to alter the meaning of “relevant public body”.

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- (4) The provision that may be made by the regulations does not include provision altering the meaning of “relevant public body” so that it includes a person who has no functions of a public nature.

#### 492 Meaning of “UK group company”

In this Part “UK group company”, in relation to any time during a period of account of a worldwide group, means a company—

- (a) which is within the charge to corporation tax at that time, and
- (b) which is a member of the group at that time.

#### 493 Embedded derivatives

Sections 415 and 585 of CTA 2009 (loan relationships with embedded derivatives) apply for the purposes of this Part of this Act.

#### 494 Other interpretation

- (1) In this Part—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“fair value accounting” means a basis of accounting under which—

- (a) assets and liabilities are measured in the company's balance sheet at their fair value, and
- (b) changes in the fair value of assets and liabilities are recognised as items of profit or loss;

“fair value” has the meaning it has for accounting purposes;

[<sup>F307</sup>“finance lease”, in relation to a company or a worldwide group, a lease which—

- (a) in accordance with generally accepted accounting practice, falls (or would fall) to be treated, in the accounts of the company or the financial statements of the group, as a finance lease or loan, or
- (b) is a right-of-use lease that would fall to be treated in those accounts or financial statements as a finance lease if the company or group were required to determine for accounting purposes whether the lease falls to be so treated;]

“interest restriction return” means a return submitted under any provision of Schedule 7A;

[<sup>F308</sup>“pension scheme” has the meaning given by section 150(1) of FA 2004;]

“reporting company” means a company which is for the time being appointed under any provision of Schedule 7A;

“the return period”, in relation to an interest restriction return of a worldwide group, means the period of account of the group to which the return relates;

[<sup>F309</sup>“right-of-use lease” means a lease in respect of which, under generally accepted accounting practice—

- (a) a right-of-use asset falls (or would fall) at the commencement of the lease to be recognised for accounting purposes in the accounts of the lessee, or



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- (b) a right-of-use asset would fall to be so recognised but for the lessee granting a sublease of the leased asset,  
and, in determining whether a lease falls within paragraph (a) or (b) at any time in an accounting period, it is to be assumed that the accounting policy applied in drawing up the lessee’s accounts for the period also applied at the commencement of the lease;]
- “service concession arrangement” has the meaning given by international accounting standards;
- “wholly-owned subsidiary” has the meaning given by section 1159(2) of the Companies Act 2006.
- (2) For the purposes of this Part a person who is not a company is regarded as being a party to a loan relationship if the person would be so regarded for the purposes of Part 5 of CTA 2009 if the person were a company.

#### Textual Amendments

- F307** Words in s. 494(1) substituted (with effect in accordance with Sch. 14 para. 6 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 14 para. 5(a)**
- F308** Words in s. 494(1) inserted (retrospectively) by Finance Act 2019 (c. 1), **Sch. 11 paras. 20, 24**
- F309** Words in s. 494(1) inserted (with effect in accordance with Sch. 14 para. 6 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 14 para. 5(b)**

### Regulations

#### 495 Financial statements: different treatment by group or members

- (1) The Commissioners may make regulations for the purpose of altering any calculation under Chapter 7 where—
- (a) the financial statements of a worldwide group for a period include or omit an amount in respect of any matter, and
  - (b) any member of the group deals with that matter for tax or accounting purposes in a different way.
- (2) The regulations—
- (a) may make provision subject to an election or other specified circumstances, and
  - (b) may make provision having effect in relation to any period beginning before the regulations are made if the period begins at some time in the calendar year in which the regulations are made.

#### 496 Parties to capital market arrangements

- (1) The Commissioners may make regulations entitling—
- (a) a UK group company which has a liability to corporation tax as a result of this Part and which is a party to a capital market arrangement, and
  - (b) another UK group company,
- to make a joint election transferring the liability to the other UK group company.
- (2) The regulations may include provision—

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- (a) specifying other conditions that must be met for an election to be made,
  - (b) requiring an election to be made on or before a particular time (for example, before the accounting period for which the liability arises),
  - (c) authorising or requiring an officer of Revenue and Customs (on the exercise of a discretion or otherwise) to accept or reject an election,
  - (d) authorising or requiring an officer of Revenue and Customs (on the exercise of a discretion or otherwise) to revoke an election previously in force and dealing with the effect of the revocation, and
  - (e) dealing with the effect of the transfer of the corporation tax liability on any other liabilities that relate to the transferred corporation tax liability.
- (3) In this section “capital market arrangement” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act).

#### **497 Change in accounting standards**

- (1) The Treasury may by regulations amend this Part to take account of a change in the way in which amounts are, or may be, presented or disclosed in financial statements where the change results from the issue, revocation, amendment or recognition of, or withdrawal of recognition from, an accounting standard by an accounting body.
- (2) For this purpose—
- “accounting standard” includes any statement of practice, guidance or other similar document, and
  - “accounting body” means—
    - (a) the International Accounting Standards Board (or successor body), or
    - (b) the Accounting Standards Board (or successor body).
- (3) The regulations—
- (a) may make provision subject to an election or other specified circumstances, and
  - (b) may make provision having effect in relation to any period beginning before the regulations are made if the change mentioned in subsection (1) is relevant to that period.
- (4) A statutory instrument containing regulations which are capable of increasing the liability of a company to corporation tax may not be made unless a draft of the instrument is laid before, and approved by a resolution of, the House of Commons.

#### **498 Regulations**

Regulations under this Part may—

- (a) make different provision for different cases or circumstances,
- (b) include supplementary, incidental and consequential provision, or
- (c) make transitional provision and savings.]

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## GENERAL PROVISIONS

**Textual Amendments**

**F310** Pt. 11: the existing Pt. 10 renumbered as Pt. 11 (except for ss. 375, 376 which are repealed) and the existing ss. 372-374, 377-382 renumbered as ss. 499-507 (with effect in accordance with [Sch. 5 para. 25\(1\)-\(3\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(1\)\(2\)\(a\)\(3\)](#) (with [Sch. 5 paras. 27, 32-34](#))

*Subordinate legislation***F311** 499 Orders and regulations

- (1) Any power of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make any order or regulations under this Act is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Act is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) Subsection (2) does not apply—
  - (a) in relation to regulations under section 7 (double taxation relief: general regulations),
  - (b) in relation to regulations under section 354(1) or 359(2) (offshore funds) if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons,
  - (c) in relation to an order under section 377(2) (transitional or saving provision in connection with coming into force of this Act), or
  - (d) if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations.
- (4) Section 828 of ICTA (which includes provision about orders made before 1 April 2010 under provisions of the Corporation Tax Acts not contained in ICTA) does not apply in relation to an order made by the Treasury under this Act before 1 April 2010.

**Textual Amendments**

**F311** S. 372 renumbered as s. 499 (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(a\)](#)

*Interpretation***F312** 500 Abbreviated references to Acts

In this Act—

- “CAA 2001” means the Capital Allowances Act 2001,
- “CTA 2009” means the Corporation Tax Act 2009,

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“CTA 2010” means the Corporation Tax Act 2010,  
 “FA”, followed by a year, means the Finance Act of that year,  
 “F(No.2)A”, followed by a year, means the Finance (No. 2) Act of that year,  
 “ICTA” means the Income and Corporation Taxes Act 1988,  
 “ITA 2007” means the Income Tax Act 2007,  
 “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003,  
 “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005,  
 “TCGA 1992” means the Taxation of Chargeable Gains Act 1992, and  
 “TMA 1970” means the Taxes Management Act 1970.

#### Textual Amendments

**F312** S. 373 renumbered as s. 500 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(b\)](#)

#### Final provisions

#### <sup>F313</sup>501 Minor and consequential amendments

Schedule 8 (minor and consequential amendments, including amendments for purposes connected with other tax law rewrite Acts) has effect.

#### Textual Amendments

**F313** S. 374 renumbered as s. 501 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(c\)](#)

#### Commencement Information

**II** S. 501 (previously s. 374) in force for specified purposes at Royal Assent and in force for further specified purposes at 1.4.2010, see s. 381(2)(d)

#### <sup>F314</sup>502 Transitional provisions and savings

- (1) Schedule 9 (transitional provisions and savings) has effect.
- (2) The Treasury may by order make such transitional or saving provision as the Treasury consider appropriate in connection with the coming into force of this Act.
- (3) An order under this section may contain provision having retrospective effect.

#### Textual Amendments

**F314** S. 377 renumbered as s. 502 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(d\)](#)

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#### Commencement Information

- I2** S. 502 (previously s. 377) wholly in force at 1.4.2010; s. 502(2)(3) in force at Royal Assent and s. 502(1) in force at 1.4.2010, see s. 381(1)(2)(g)

#### <sup>F315</sup>503 Repeals and revocations

- (1) Schedule 10 (repeals and revocations, including of spent enactments and including repeals for purposes connected with other tax law rewrite Acts) has effect.
- (2) If—
  - (a) CTA 2010 repeals or revokes a provision and the repeal or revocation is for corporation tax purposes only (see section 1181(2) of that Act), and
  - (b) this Act also repeals or revokes the provision,the repeal or revocation of the provision by this Act is for all purposes other than corporation tax purposes.

#### Textual Amendments

- F315** S. 378 renumbered as s. 503 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(e\)](#)

#### <sup>F316</sup>504 Index of defined expressions

- (1) Schedule 11 (index of defined expressions that apply for purposes of Parts 2 to [<sup>F317</sup>10]) has effect.
- (2) That Schedule lists the places where some of the expressions used in Parts 2 to [<sup>F317</sup>10] are defined or otherwise explained.

#### Textual Amendments

- F316** S. 379 renumbered as s. 504 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(f\)](#)
- F317** Word in s. 504(1)(2) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(5\)](#)

#### <sup>F318</sup>505 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).
- (2) An amendment, repeal or revocation contained in Schedule 7, 8 or 10 has the same extent as the provision amended, repealed or revoked.

#### Textual Amendments

- F318** S. 380 renumbered as s. 505 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 10\(3\)\(g\)](#)

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## <sup>F319</sup>506 Commencement

- (1) This Act comes into force on 1 April 2010 and has effect—
- (a) for corporation tax purposes, for accounting periods ending on or after that day,
  - (b) for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, and
  - (c) for petroleum revenue tax purposes, for chargeable periods beginning on or after 1 July 2010.
- (2) Subsection (1) does not apply to the following provisions (which therefore come into force on the day on which this Act is passed)—
- (a) section [<sup>F320</sup>499],
  - (b) section [<sup>F321</sup>500],
  - (c) the amendments in TCGA 1992 and ITA 2007 made by Part 13 of Schedule 8,
  - (d) section [<sup>F322</sup>501] so far as relating to those amendments,
  - <sup>F323</sup>(e) .....
  - <sup>F323</sup>(f) .....
  - (g) section [<sup>F324</sup>502(2) and (3)],
  - (h) section [<sup>F325</sup>505],
  - (i) this section, and
  - (j) section [<sup>F326</sup>507].

### Textual Amendments

- F319** S. 381 renumbered as s. 506 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(3)(h)**
- F320** Word in s. 506(2)(a) (previously s. 381(2)(a)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(4)(e)(i)**
- F321** Word in s. 506(2)(b) (previously s. 381(2)(b)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(4)(e)(ii)**
- F322** Word in s. 506(2)(d) (previously s. 381(2)(d)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(4)(e)(iii)**
- F323** S. 506(2)(e)(f) (previously s. 381(2)(e)(f)) repealed (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(2)(b)**
- F324** Words in s. 506(2)(g) (previously s. 381(2)(g)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(4)(e)(iv)**
- F325** Word in s. 506(2)(h) (previously s. 381(2)(h)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(4)(e)(v)**
- F326** Word in s. 506(2)(i) (previously s. 381(2)(i)) substituted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(4)(e)(vi)**

## <sup>F327</sup>507 Short title

This Act may be cited as the Taxation (International and Other Provisions) Act 2010.

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### Textual Amendments

**F327** S. 382 renumbered as s. 507 (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 5 para. 10(3)(i)**

**Status:**

Point in time view as at 12/02/2019.

**Changes to legislation:**

Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.