

*These notes refer to the Taxation (International and Other Provisions)
Act 2010 (c.8) which received Royal Assent on 18 March 2010*

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Transfer pricing

Chapter 6: Balancing payments

Section 204: Meaning of “capital market condition” in sections 199 and 201

407. This section explains the meaning of “capital market condition” and is based on paragraphs 1A(8), 7B(1), (3), (9) and (10) and 7D(2) to Schedule 28AA to ICTA.
408. Paragraph 7B(9) of Schedule 28AA excludes from the definition of “independent person” a person who has a participatory relationship with either of the affected persons. Paragraph 7B(10) applies the definition of “participatory relationship” given in paragraph 1A of Schedule 28AA. That definition is expressed to be about cases where one company has a participatory relationship with another company. It therefore suggests that a person excluded by paragraph (b) of the definition of “independent person” must necessarily be a company. While there may be an argument that the definition in paragraph 1A should apply with modifications to make it work in the context of paragraph 7B, such an argument is not considered persuasive.