SCHEDULES

SCHEDULE 3

CORPORATE INTEREST RESTRICTION ETC.

PART 1

AMENDMENTS TO TIOPA 2010

Introduction

1 Part 10 of TIOPA 2010 (corporate interest restriction) is amended as follows.

Tax-interest expense amounts of a company: charities

2 In section 382 (the tax-interest expense amounts of a company), after subsection (1) insert—

"(1A) But, in the case of a company which is a charity (as defined in paragraph 1 of Schedule 6 to FA 2010) at the end of the period of account, references in this Part to a "tax-interest expense amount" of the company do not include references to an amount which meets Condition A, B or C."

First period of account where new holding company

3 In section 395A (carry forward of interest allowance: new holding company), for subsection (3) substitute—

"(3) For the purposes of this Chapter and Chapter 5—

(a) so far as it would not otherwise be the case—

(i) the first period of account of the new group is treated as beginning with the day on which the qualifying takeover occurs (the "takeover day"), and

(ii) the last period of account of the old group is treated as ending on the day before the takeover day;

(b) 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."

4 In section 400A (carry forward of excess debt cap: new holding company), in subsection (3)—

(a) for "the group's fixed ratio debt cap" substitute "the new group's fixed ratio debt cap";

(b) for "ending immediately before the qualifying takeover" substitute "ending on the day before the takeover day (see section 395A(3))".

Amounts not brought into account in determining a company's tax-EBITDA

5 (1) Section 407(1) (amounts not brought into account in determining a company's tax-EBITDA) is amended as follows.

(2) At the end of paragraph (a) insert "(or an amount which would, apart from section 388, be a tax-interest income amount);".

(3) After paragraph (g) insert—

"(ga) a reduction under paragraph 37(3)(b) of Schedule 5 to FA 2019 (non-UK resident companies carrying on UK property businesses etc: unrelieved amounts);".

"Relevant expense amount" and "relevant income amount"

6 (1) Section 411 ("relevant expense amount" and "relevant income amount") is amended as follows.

(2) For subsection (1)(j) substitute—

"(j) debits that are brought into account under Part 5 of CTA 2009 as a result of section 481 of that Act (relevant non-lending relationships), or would be so brought into account if the company in question were within the charge to corporation tax, other than—

(i) exchange losses, or

(ii) impairment losses;".

(3) For subsection (2)(h) substitute—

"(h) credits that are brought into account under Part 5 of CTA 2009 as a result of section 481 of that Act (relevant non-lending relationships), or would be so brought into account if the company in question were within the charge to corporation tax, other than—

(i) exchange gains, or

(ii) the reversal of impairment losses;".

7 In section 412 (interpretation of section 411), in subsection (7), omit the definition of "relevant non-lending relationship".

Adjusted net group-interest expense: debits referable to times before UK property business etc carried on

8 (1) Section 413 (adjusted net group-interest expense) is amended as follows.

(2) In subsection (3) (upward adjustment), after paragraph (c) insert—

"(ca) an amount in respect of a loan relationship that is brought into account by a member of the group, for a relevant accounting period in relation to the period of account, under section 330ZA CTA 2009 (debits referable to times before UK property business etc carried on) so far as that amount has not been included in the adjusted net group-interest expense of the group for any earlier period of account;

(cb) an amount in respect of a relevant derivative contract that would be brought into account by a member of the group, for a relevant accounting period in relation to the period of account, under section 607ZA of CTA 2009, if an election under regulation 6A of the Disregard Regulations (as defined in section 421) had effect in

relation to the contract, so far as the relevant amount has not been included in the adjusted net group-interest expense of the group for any earlier period of account;

(cc) a relevant income amount in respect of a loan relationship or a relevant derivative contract to which a member of the group is a party that—

(i) is recognised in the financial statements of the group for the period,

(ii) is not brought into account by a member of the group, for a relevant accounting period in relation to the period of account, and

(iii) is expected to be brought into account, or (in the case of a relevant derivative contract) would, if an election under regulation 6A of the Disregard Regulations had effect in relation to the contract, be expected to be brought into account, by a member of the group, for another accounting period, under section 330ZA or section 607ZA of CTA 2009;".

(3) In subsection (4) (downward adjustment), after paragraph (c) insert—

"(ca) a relevant expense amount, in respect of a loan relationship or a relevant derivative contract to which a member of the group is a party, that—

(i) is recognised in the financial statements of the group for the period,

(ii) is not brought into account by a member of the group, for a relevant accounting period in relation to the period of account, and

(iii) is expected to be brought into account, or (in the case of a relevant derivative contract) would, if an election under regulation 6A of the Disregard Regulations had effect in relation to the contract, be expected to be brought into account, by a member of the group, for another accounting period, under section 330ZA or section 607ZA of CTA 2009;".

(4) At the end insert—

"(7) Subsection (8) applies, unless the reporting company elects otherwise, in relation to a period of account of a worldwide group—

(a) ending on or after 6 April 2020, and

(b) beginning before 1 April 2023.

(8) In relation to the period of account—

(a) no amount within any of paragraphs (ca) to (cc) of subsection (3) is to be treated as an "upward adjustment", and

(b) no amount within paragraph (ca) of subsection (4) is to be treated as a "downward adjustment"."

Adjusted net group-interest expense: debits in respect of pre-trading expenditure

9 (1) Section 413 (adjusted net group-interest expense) is amended as follows.

(2) In subsection (3) (upward adjustment), after paragraph (cc) (inserted by paragraph 8 of this Schedule) insert—

"(cd) an amount that is brought into account by a member of the group, for a relevant accounting period in relation to the period of account, under section 330(3) of CTA 2009 (debits in respect of pre-trading expenditure) in accordance with an election made under section 330(1)(b) of that Act, so far as that amount has not been included in the adjusted net group-interest expense of the group for any earlier period of account;".

(3) In subsection (4) (downward adjustment), after paragraph (ca) (inserted by paragraph 8 of this Schedule) insert—

"(cb) an amount, in respect of a loan relationship to which a member of the group is a party, that—

(i) is recognised in the financial statements of the group for the period, but

(ii) is prevented from being brought into account in accordance with an election made under section 330(1)(b) of CTA 2009 (debits in respect of pre-trading expenditure);".

Qualifying net group-interest expense: meaning of "equity notes"

10 In section 414 (qualifying net-group interest expense), in subsection (3), at the beginning of paragraph (c) insert "relevant".

11 In section 415 (qualifying net group-interest expense: interpretation), for subsection (7) substitute—

"(7) For the purposes of section 414(3)(c), a "relevant equity note" is a security that—

(a) is an equity note within the meaning of section 1016 of CTA 2010, by reference to satisfying a test in subsection (2) of that section, and

(b) would satisfy that test if the "permitted period" for the purposes of that section were the period of 100 years beginning with the date of the security's issue."

Capitalised interest brought into account for tax purposes in accordance with GAAP

12 (1) Section 423 (capitalised interest brought into account for tax purposes in accordance with GAAP) is amended as follows.

(2) After subsection (2A) insert—

"(2AA) Section 413 has effect, in the case of a GAAP-taxable asset within subsection (2AB), as if—

(a) the definition of "upward adjustment" included so much of its carrying value as is attributable to a relevant expense amount (whether or not that amount is brought into account in the group's financial statements for the relevant period of account); and

(b) the definition of "downward adjustment" included so much of its carrying value as is attributable to a relevant income amount (whether or not that amount is brought into account in the group's financial statements for the relevant period of account).

(2AB) A GAAP-taxable asset is within this subsection if it is (or, under section 173 of TCGA 1992, is treated as being) appropriated, in a relevant accounting period in relation to a period of account, from trading stock to fixed assets."

(3) In subsection (3), for "(2)(b) and (2A)" substitute "(2)(b), (2A) and (2AA)".

Interest allowance (non-consolidated investment) election: "non-consolidated associate"

13 (1) Section 429 (meaning of "non-consolidated associate") is amended as follows.

(2) In subsection (1), for "or C" substitute ", C or D".

(3) In subsection (2), in the words before paragraph (a), for "the entity" substitute "the ultimate parent's interest in the entity".

(4) After subsection (4) insert—

"(4A) Condition D is that—

(a) the entity is—

(i) a partnership, or

(ii) a transparent entity (other than a partnership), and

(b) the ultimate parent's interest in the entity is accounted for in the financial statements of the group for the relevant period of account on the basis of fair value accounting."

(5) For subsection (6) substitute—

"(6) For the purposes of this section—

(a) "entity" includes anything which may be treated as an entity for accounting purposes (regardless of whether it has a legal personality as a body corporate);

(b) an entity is "transparent" if—

(i) it is not chargeable to corporation tax or income tax as a person (ignoring any exemptions), or

(ii) it is a collective investment vehicle which is "transparent for income tax purposes" for the purposes of paragraph 8 of Schedule 5AAA to TCGA 1992 (see paragraph 8(7) of that Schedule)."

Public infrastructure

14 (1) Section 435 (group elections modifying the operation of sections 433 and 434) is amended as follows.

(2) In subsection (1), after "worldwide group" insert ", and have each made an election under section 433,".

(3) In subsection (2)—

(a) before paragraph (a) insert—

"(aa) must be made before the end of the earliest elected accounting period (see subsection (11));";

(b) in paragraph (a), after "election" insert ", which may not be before the first day of the earliest elected accounting period".

(4) In subsection (3), for "an election, revocation" substitute "a revocation".

(5) At the end insert—

"(11) The "earliest elected accounting period" is the accounting period which—

(a) is the first elected accounting period of an elected company, and

(b) begins no later than the first elected accounting period of each other elected company.

(12) For the purposes of subsection (11), the "first elected accounting period" of an elected company is the first of the company's accounting periods in relation to which the election is to have effect.

(13) If there is more than one earliest elected accounting period under subsection (11) and those periods (the "relevant periods") do not all end on the same date, the "earliest elected accounting period" is the relevant period that ends no later than each of the other relevant periods."

15 (1) Section 436 (meaning of "qualifying infrastructure activity") is amended as follows.

(2) In subsection (5), for paragraphs (a) and (b) substitute—

"(a) the building or part is, or is to be, let on a short-term basis —

(i) within a UK property business carried on by the company, or another member of the worldwide group of which it is a member at that time, and

(ii) to persons who, at that time, are not related parties of the company or member."

(3) After subsection (5) insert—

"(5A) But a building, or part of a building, is not a public infrastructure asset in relation to a company at a particular time if, were the building or part to be disposed of at that time, profits arising from the disposal would be charged to corporation tax as profits of a trade."

16 After section 438 insert—

"**438A Application of section 438: certain creditors treated as qualifying infrastructure companies**

(1) This section applies where—

(a) a company ("C"), at a time in the period mentioned in subsection (1) of section 438—

(i) is a member of the worldwide group of which the qualifying infrastructure company mentioned in that subsection is a member, but

(ii) is not a UK group company; and

(b) C is a creditor in relation to an amount which—

(i) is a relevant loan relationship debit (as defined in section 383) for the debtor company, or

(ii) would be a relevant loan relationship debit if the debtor company were UK resident.

(2) For the purposes of section 438, C is treated in relation to the amount mentioned in subsection (1)(b) (the "relevant loan amount") as a qualifying infrastructure company if—

(a) throughout the period mentioned in section 438(1), C—

(i) meets the public infrastructure income test for the accounting period (see subsections (2) to (4) of section 433) and subsection (3) of this section), and

(ii) meets the public infrastructure assets test for the accounting period (see subsections (5) to (10) of that section and subsection (4) of this section),

(but does not satisfy the conditions in subsection (1)(c) and (d) of section 433);

(b) the loan to which the relevant loan amount relates (the "relevant loan") is fully funded by another loan (the "corresponding loan") made to C for that purpose and on substantially the same terms as the relevant loan; and

(c) amounts arising to C in respect of the corresponding loan would, if section 438(2) applied to C, qualify as "exempt amounts" within the meaning of that subsection.

(3) For the purposes of subsection (2)(a)(i), C is also treated as meeting the public infrastructure income test for an accounting period if all, or all but an insignificant proportion, of its income for the period derives from—

(a) anything listed in any of paragraphs (a) to (c) of section 433(2),

(b) shares in, or debt issued by, a company that meets the test in section 433(2) for that period,

(c) shares in or debt issued by a company that is treated as meeting the public infrastructure income test for that period by reason of this subsection.

(4) For the purposes of subsection (2)(a)(ii), C is also treated as meeting 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) anything listed in any of paragraphs (a) to (e) of section 433(5),

(b) shares in, or debt issued by, a company that meets the test in section 433(5) for that period,

(c) shares in or debt issued by a company that is treated as meeting the public infrastructure assets test for that period by reason of this subsection.

(5) For the purposes of determining whether amounts arising to C would qualify as exempt amounts under section 438(2) (for the purposes of subsection (2)(c) of this section), the recourse of a creditor is treated as being limited to relevant infrastructure matters if, in the event that C fails to perform its obligations in question, the recourse of the creditor is limited to—

(a) anything listed in paragraphs (a) to (c) of section 438(4),

(b) shares in or debt issued by a company whose income and assets consist wholly of income and assets within those paragraphs,

(c) shares in or debt issued by a company whose income and assets consist wholly of income and assets within paragraphs (a) or (b) of this subsection, or

(d) shares in or debt issued by a company whose income and assets consists wholly of income and assets within paragraphs (a) to (c) of this subsection, and so on.

(6) For the purposes of subsection (5), in determining whether a company's income and assets consists wholly of income and assets of a particular description, any source of income or any asset is ignored if, having regard to all the circumstances, it is reasonable to regard as insignificant the amount of income arising from the source, or (as the case may be) the value of the asset recognised, in the accounting period."

Partnerships and other transparent entities

17 In section 447 (partnerships and other transparent entities), for subsection (6) substitute—

"(6) For the purposes of this section an entity is "transparent" if—

(a) it is not chargeable to corporation tax or income tax as a person (ignoring any exemptions), or

(b) it is a collective investment vehicle which is "transparent for income tax purposes" for the purposes of paragraph 8 of Schedule 5AAA to TCGA 1992 (see paragraph 8(7) of that Schedule)."

Investments held by investment managers

18 (1) Section 454A (investments held by investment managers) is amended as follows.

(2) In subsection (1)(a), for "is a member of a worldwide group" substitute "would, apart from this section, be a member of a worldwide group".

(3) After subsection (1) insert—

"(1A) Except in a case within subsection (2), for the purposes of this Part—

(a) the group does not include S (or its subsidiaries), and

(b) accordingly, none of those entities is regarded as a consolidated subsidiary of any member of the group."

(4) In subsection (2), for "For the purposes of this Part" substitute "Where S is a partnership or another transparent entity, for the purposes of this Part".

Determining the worldwide group: "non-consolidated subsidiary" and "consolidated subsidiary"

19 (1) Section 475 (meaning of "non-consolidated subsidiary" and "consolidated subsidiary") is amended as follows.

(2) In subsection (1)(b), omit "or on the basis that X were an asset held for sale or held for distribution to owners".

(3) For subsection (3) substitute—

"(3) In this section "subsidiary" has the meaning given by international accounting standards."

Appointment of a reporting company by Revenue and Customs

20 In paragraph 4 of Schedule 7A (appointment of a reporting company by Revenue and Customs), in sub-paragraph (5)(a) for "36 months" substitute "4 years".

Revised interest restriction return

21 (1) Paragraph 8 of Schedule 7A (revised interest restriction return) is amended as follows.

(2) For sub-paragraph (4) substitute—

"(4) Where any of the figures contained in the previous interest restriction return have become incorrect (whether or not as a result of a member of the group amending, or being treated as amending, its company tax return), the reporting company must submit a revised interest restriction return (for the purpose of correcting those figures) to an officer of Revenue and Customs."

(3) For sub-paragraph (5) substitute—

"(5) A revised interest restriction return submitted under sub-paragraph (4) is of no effect unless it is received by an officer of Revenue and Customs before the end of—

(a) the period of 3 months beginning with the relevant day, or

(b) in a case where sub-paragraph (5B) applies, such longer period as an officer of Revenue and Customs may allow.

(5A) For the purposes of sub-paragraph (5), the "relevant day" is—

(a) where the figures contained in the previous interest restriction return have become incorrect as the result of a member of the group amending, or being treated as amending, an amount stated in its company tax return, the first day on which that amount can no longer be altered (within the meaning of paragraph 88(3) to (5) of Schedule 18 to FA 1998);

(b) in any other case, the day on which the figures contained in the previous interest restriction return were found to have become incorrect.

(5B) This sub-paragraph applies where an officer of Revenue and Customs considers that, as a result of an enquiry into a company tax return of another member of the group, the reporting company may subsequently be required to submit another revised interest restriction return under sub-paragraph (4).

(5C) A revised interest restriction return submitted under sub-paragraph (4) may differ from the previous return only so far as the differences are in consequence of the correction referred to in that sub-paragraph."

22 (1) Paragraph 29 of Schedule 7A (penalty for failure to deliver a return) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a), after "paragraph 7" insert ", or a revised interest restriction return under paragraph 8(4),";

(b) in paragraph (b), omit "(see sub-paragraph (5) of that paragraph)".

(3) After sub-paragraph (1), insert—

"(1A) In subsection (1)(b), the reference to the "filing date" in relation to a period of account is—

(a) in relation to an interest restriction return under paragraph 7, a reference to the filing date for the purposes of that paragraph (see paragraph 7(5) and (5A));

(b) in relation to a revised interest restriction return under paragraph 8(4), a reference to the end of the period within which the return may have effect (see paragraph 8(5)).".

Enquiry into interest restriction return

23 In paragraph 41 of Schedule 7A (normal time limits for opening enquiry), in sub-paragraph (2)—

(a) omit paragraph (b) (but not the "and" at the end), and

(b) in paragraph (c), after "receives the" insert "return or".

Determinations by officers of Revenue and Customs

24 (1) Paragraph 56 of Schedule 7A (power of Revenue and Customs to make determinations where no return filed etc) is amended as follows.

(2) For sub-paragraph (1)(b) (but not the "and" at the end) substitute—

"(b) the filing date in relation to the relevant period of account has passed (see paragraph 7(5)),".

(3) In sub-paragraph (1)(c)—

(a) omit "A,";

(b) for "or C" substitute ", C or D".

(4) Omit sub-paragraphs (2) and (3).

(5) After sub-paragraph (5) insert—

"(5A) Condition D is that—

(a) the appointment of a reporting company has effect in relation to the relevant period of account,

(b) the reporting company is required to submit a revised interest restriction return for the period under paragraph 8(4), and

(c) the time limit in paragraph 8(5) for the submission of the revised return has passed without the revised return being received by an officer of Revenue and Customs."

(6) In sub-paragraph (9)—

(a) after "made" insert "—

(a) in a case where Condition D is met, after the end of the period of 12 months beginning with the expiry of the time limit mentioned in paragraph 8(5), and

(b) in any other case,";

(b) for "the determination date" substitute "the filing date referred to in sub-paragraph (1)(b)".

Consequential claims to company tax returns

25 In paragraph 72 of Schedule 7A (consequential claims to company tax returns), in sub-paragraph (1)(a) omit "56 or".

Status:
Point in time view as at 01/08/2023.

Changes to legislation:
There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Part 1.