



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 4

TRANSFER PRICING

Modifications etc. (not altering text)

- C1** Pt. 4 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 2](#))
- C2** 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

CHAPTER 1

BASIC TRANSFER-PRICING RULE

146 Application of this Part

This Part applies for—

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

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),

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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),
 - (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),^{F1}...
 - (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) [^{F2}, 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).

Textual Amendments

- F1** 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)**
- F2** 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)**

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

148 The “participation condition”

- (1) For the purposes of section 147(1)(b), the participation condition is met if—
 - (a) condition A is met in relation to the actual provision so far as the actual provision is provision relating to financing arrangements, and
 - (b) 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—
 - (a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
 - (b) 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—
 - (a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
 - (b) 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)

- C3** 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))
- C4** 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))
- C5** 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))
- C6** 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))

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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—
 - (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).

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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,
 - (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—

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.

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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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
 - (b) disregarded company income within the meaning given by section 816 of that Act.
- (6) For the purposes of subsections (2) to (4)—
 - (a) Part 7 (tax treatment of financing costs and income), and
 - (b) paragraph E of the list in section 1000(1) of CTA 2010 (excessive interest etc treated as a distribution),
 are to be disregarded.

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),

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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 of Part 5 of CTA 2009 (non-trading deficits on loan relationships),
- (f) section 1223 of CTA 2009 (excess of management expenses), or
- (g) Part 5 of CTA 2010 (group relief).

(2) In this Part “profits” includes income.

“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), and
 - (c) in Part 5, section 219(2).
- (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.

“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), and
 - (c) in Part 5, section 219(2),
- a person is indirectly participating in the management, control or capital of another person only if section 159 or 160 so provides.

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), and

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (c) in Part 5, section 219(2).
- (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—
- (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.

160 Indirect participation: one of several major participants

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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (a) sections 148(2) and (3), 154(5), 175(2) and 204(4),
 - (b) in Part 2, section 132(7), and
 - (c) in Part 5, section 219(2).
- (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.

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).

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.

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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.

163 Meaning of “connected” in section 159

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

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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

(b) any rules in the same or equivalent terms.

[^{F3}(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, 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, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated.]

(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

F3 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)

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.
- (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).

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (2) Exceptions to subsection (1) are provided—
- (a) in the case of a small enterprise, by section 167, and
 - (b) in the case of a medium-sized enterprise, by sections 167 and 168.

Modifications etc. (not altering text)

C7 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—
 - (a) the other affected person, or
 - (b) 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) 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
 - (b) “qualifying territory” and “non-qualifying territory” are defined in section 173.
- (5) In subsection (3) “resident”, in relation to a territory—
 - (a) 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
 - (b) 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.

Modifications etc. (not altering text)

C7 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)

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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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)

C7 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)

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—
- any provision specified, or of a description specified, in the notice, or
 - 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—
- section 9A or 12AC of TMA 1970, or
 - paragraph 24 of Schedule 18 to FA 1998.

Modifications etc. (not altering text)

C7 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 on the ground 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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

Modifications etc. (not altering text)

C7 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—
 - (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.
- (3) So far as relating to any provision made or imposed by or in relation to a person—
 - (a) who is a 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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

Modifications etc. (not altering text)

C7 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)

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—

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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
 - (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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (b) the other affected person (in this Chapter called “the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (2) On the making of a claim by the disadvantaged person—
- (a) the profits and losses of the disadvantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision, and
 - (b) despite any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments are to be made in the disadvantaged person's case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.
- (3) Provision about claims under this section is made by—
- 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).

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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (3) In subsections (1)(b) and (4)(a) “security” includes securities not creating or evidencing a charge on assets.
- (4) For the purposes of subsection (1)(b), any—
 - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
 - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.
- (5) The reference in subsection (1)(c) to a guarantee includes—
 - (a) a reference to a surety, and
 - (b) if the issuer is a company, a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuer has a reasonable expectation that in the event of a default by the issuer the person will be paid by, or out of the assets of, one or more companies.

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

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

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

- (1) A claim under section 174 can be made only in the period mentioned in subsection (2) or (3).
- (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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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

- (1) Subsection (2) applies if—
 - (a) the actual provision is provision made or imposed in relation to a controlled foreign company,
 - (b) in determining for the purposes of Chapter 4 of Part 17 of ICTA the amount of that company's chargeable profits for an accounting period, its profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,
 - (c) the whole of those chargeable profits are to be apportioned under section 747(3) of ICTA to one or more companies resident in the United Kingdom, and
 - (d) tax is chargeable under section 747(4) of ICTA in respect of the whole of those chargeable profits, as so apportioned to those companies.
- (2) Sections 174 to 178 have effect as if the controlled foreign company 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 companies mentioned in subsection (1)(c), and
 - (b) references to corporation tax include a reference to tax chargeable under section 747(4) of ICTA.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

(4) In this section—

“controlled foreign company” has the same meaning as in Chapter 4 of Part 17 of ICTA, and

“accounting period”, in relation to a controlled foreign company, has the same meaning as in that Chapter.

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.

(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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.

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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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
 - (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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.

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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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—
- (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).

Status: Point in time view as at 01/10/2011.

Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)*

- (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.

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—

Status: Point in time view as at 01/10/2011.

Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)*

- (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
 - (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

Status: Point in time view as at 01/10/2011.

Changes to legislation: *There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)*

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.
- (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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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).
- (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”.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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.
- (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—

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.
- (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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.
- (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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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.
- (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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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—
- “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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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—
- (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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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,
 - (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

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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—
- “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).

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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.

[^{F4}(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).]

Textual Amendments

- F4** 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)—

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

“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)—
 - “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.

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

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.

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).
- (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—

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4. (See end of Document for details)

- (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”.

Status:

Point in time view as at 01/10/2011.

Changes to legislation:

There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 4.