



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 5

ADVANCE PRICING AGREEMENTS

218 Meaning of “advance pricing agreement”

- (1) In this Part “advance pricing agreement” means a written agreement that—
- (a) is made by the Commissioners with any person (“A”) as a consequence of an application by A under section 223,
 - (b) relates to one or more of the matters mentioned in subsection (2), and
 - (c) declares that it is an agreement made for the purposes of this section.
- (2) Those matters are—
- (a) if A is not a company, the attribution of income to a branch or agency through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,
 - (b) if A is a company, the attribution of income to a permanent establishment through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,
 - (c) the attribution of income to any permanent establishment of A's, wherever situated, through which A has been carrying on, or is proposing to carry on, any business,
 - (d) the extent to which income that has arisen or may arise to A is to be taken for any purpose to be income arising in a country or territory outside the United Kingdom,
 - (e) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between A and any associate (see section 219) of A's, and

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- (f) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between an oil-related ring-fence trade carried on by A (see section 206) and any other activities carried on by A.

219 Meaning of “associate” in section 218(2)(e)

- (1) This section applies for the purposes of section 218(2)(e).
- (2) Two persons are associates in relation to provision made or imposed as between them if at the time of the making or imposition of the provision—
 - (a) one of them is directly or indirectly participating in the management, control or capital of the other, or
 - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of the two persons.
- (3) Two persons are also associates in relation to any provision if section 217(4) (which applies to provision made or imposed in connection with sales of oil) requires the persons to be treated as controlled by the same person at the time of the making or imposition of that provision.
- (4) For the interpretation of subsection (2), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (2) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

220 Effect of agreement on party to it

- (1) Subsection (2) applies if a chargeable period is one to which an advance pricing agreement relates.
- (2) The Tax Acts have effect in relation to the chargeable period as if, in the case of the person with whom the Commissioners made the agreement, questions relating to the matters mentioned in section 218(2) are to be determined—
 - (a) in accordance with the agreement, and
 - (b) without reference to the provisions in accordance with which they would otherwise be determined.
- (3) Subsection (2) is subject to—
 - subsections (4) and (5), and
 - section 221.
- (4) A question is to be determined as mentioned in subsection (2) only so far as the agreement provides for the question to be determined in that way.
- (5) In the case of so much of a question as—
 - (a) relates to any matter mentioned in paragraph (e) or (f) of section 218(2), and
 - (b) is not comprised in a question that relates to a matter within another paragraph of section 218(2),
 reference to a provision is capable of being excluded under subsection (2) by an advance pricing agreement only if the provision is in Part 4.

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221 Effect of revocation of agreement or breach of its conditions

- (1) An advance pricing agreement does not have effect in accordance with section 220(2) in relation to any determination of a question if any of conditions A, B and C is met.
- (2) Condition A is that a time to which the question relates is after a time as from which an officer has revoked the agreement in accordance with the agreement's terms.
- (3) Condition B is that the question relates to a time after, or in relation to which, there has been a failure by a party to the agreement to comply with a significant provision of the agreement.
- (4) Condition C is that the question relates to a matter as respects which a key condition has not been met or is no longer met.
- (5) A provision of the agreement is “significant” for the purposes of subsection (3) if compliance with that provision is, under the terms of the agreement, to be a condition of the agreement's having effect.
- (6) Any other condition that, under the terms of the agreement, is to be a condition of the agreement's having effect is a “key condition” for the purposes of subsection (4).

222 Effect of agreement on non-parties

- (1) Subsections (2), (5) and (6) apply if—
 - (a) an advance pricing agreement has effect in relation to any provision (“the actual provision”) made or imposed as between any person (“A”) and another (“B”), and
 - (b) section 220(2) has the effect in A's case of requiring a question relating to the actual provision to be determined in accordance with the agreement rather than by reference to rules which would otherwise be applicable because of Part 4.
- (2) The provisions mentioned in subsection (3) have effect in B's case on the assumption that any question within subsection (4) is to be determined, to the same extent as in A's case, by reference to the agreement.
- (3) The provisions are—
 - sections 174 to 178 (transfer pricing: claim by disadvantaged person), and
 - sections 188 and 189 (transfer pricing: adjustment of double taxation relief if claim made).
- (4) The questions are—
 - (a) whether A is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and
 - (b) what constitutes the arm's length provision in relation to the actual provision.
- (5) Subsection (2) has effect subject to any advance pricing agreement made between the Commissioners and B.
- (6) Any assumptions to be made because of the agreement are “advance-pricing-agreement assumptions” for the purposes of paragraph (b) of the definition in section 185(5) of “transfer-pricing determination”.

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223 Application for agreement

- (1) For the purposes of section 218(1)(a), an application by a person (“A”) is an application under this section if it complies with subsections (2) to (5).
- (2) It must be an application to the Commissioners for the clarification by agreement of the effect in A's case of provisions by reference to which questions relating to any one or more of the matters mentioned in section 218(2) are to be, or might be, determined.
- (3) It must set out A's understanding of what would in A's case be the effect, in the absence of any agreement, of the provisions in relation to which clarification is sought.
- (4) It must set out the respects in which it appears to A that clarification is required in relation to those provisions.
- (5) It must set out how A proposes that matters should be clarified in a manner consistent with the understanding mentioned in subsection (3).

224 Provision in agreement about years ended or begun before agreement made

- (1) An advance pricing agreement may contain provision relating to chargeable periods ending before the agreement is made, subject to subsection (2).
- (2) An advance pricing agreement may not contain provision relating to chargeable periods ending before 27 July 1999.
- (3) If an advance pricing agreement—
 - (a) relates to a chargeable period beginning or ending before the agreement is made, and
 - (b) provides for the manner in which adjustments are to be made for tax purposes in consequence of the agreement,the adjustments are to be made for those purposes in the manner provided for in the agreement.

225 Modification and revocation of agreement

- (1) Subsection (2) applies if an advance pricing agreement provides for the modification, or revocation, of the agreement—
 - (a) by the Commissioners, or
 - (b) by an officer.
- (2) The agreement may provide for the modification or revocation to take effect as from such time as the Commissioners or officer may determine.
- (3) A time determined under subsection (2) may be (but need not be) a time before the modification is made or the agreement is revoked.

226 Annulment of agreement for misrepresentation

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that the Commissioners and any person (“A”) have at any time purported to enter into an advance pricing agreement.

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- (3) Condition B is that, before that time, A fraudulently or negligently provided the Commissioners with information which was false or misleading.
- (4) Condition C is that the information was so provided—
 - (a) for or in connection with the application to the Commissioners for the making of the agreement, or
 - (b) otherwise in connection with the preparation of the agreement.
- (5) Condition D is that the Commissioners have notified A that the agreement is nullified by reason of the misrepresentation.
- (6) The agreement is to be treated as never made.

227 Penalty for misrepresentation in connection with agreement

A person is liable to a penalty of not more than £10,000 if the person fraudulently or negligently makes a false or misleading statement to the Commissioners or an officer—

- (a) for or in connection with any application to the Commissioners for them to enter into an advance pricing agreement, or
- (b) otherwise in connection with the preparation of an advance pricing agreement.

228 Party to agreement: duty to provide information

A party to an advance pricing agreement must provide the Commissioners from time to time with all reports and other information that the party may be required to provide—

- (a) under the agreement, or
- (b) as a result of a request made by an officer in accordance with the agreement.

229 Modifications of agreement for double taxation purposes

- (1) Subsection (2) applies if a mutual agreement made under and for the purposes of any double taxation arrangements is not consistent with the terms of an advance pricing agreement.
- (2) The Commissioners must ensure that the advance pricing agreement is modified so far as may be necessary for enabling effect to be given to the mutual agreement in relation to the subject-matter of the advance pricing agreement.
- (3) The Commissioners may comply with subsection (2) by exercising powers conferred on them by the advance pricing agreement or otherwise.
- (4) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

230 Interpretation of Part: meaning of “Commissioners” and “officer”

In this Part—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs, and

“officer” means an officer of Revenue and Customs.

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