

# **TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4: Transfer pricing**

##### *Chapter 2: Key interpretative provisions*

##### *Section 160: Indirect participation: one of several major participants*

331. This section provides that a person is indirectly participating in the management, control or capital of another person where a 40% holdings test is met. It is based on section 808B(9) of, and paragraph 4(2) and (7) to (10) of Schedule 28AA to, ICTA and section 85(6) of FA 1999.
332. For the 40% test to be met two conditions must apply. The first condition is that the person, along with another person, must between them control the body or firm. Then, looking at the holdings, rights and powers that give the pair control of the body or firm, the second condition is that each of the pair must have at least a 40% share of all holdings, rights and powers of the kinds that give them that control. It is possible to read the section (and the source legislation) as saying that each of the pair must merely have a 40% share of their combined stake. This alternative reading would, however, be less favourable to taxpayers and does not reflect the approach that has been taken in HMRC's published International Manual at INTM 432070.
333. "Enterprise" in *subsections (2) and (3)* is not defined. It is a term used in Article 9 of the OECD Model Tax Convention and defined in Article 3 as "the carrying on of any business". Article 3 goes on to say that "business" includes the performance of professional services and of other activities of an independent character. This meaning of enterprise applies here by virtue of section 164 which requires this Part to be read consistently with Article 9.