

2017 No. 1224

CORPORATION TAX

The Corporate Interest Restriction (Financial Statements: Group Mismatches) Regulations 2017

<i>Made</i>	- - - -	<i>7th December 2017</i>
<i>Laid before the House of Commons</i>		<i>8th December 2017</i>
<i>Coming into force</i>	- -	<i>29th December 2017</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 495 of the Taxation (International and Other Provisions) Act 2010(a), make the following Regulations:

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Corporate Interest Restriction (Financial Statements: Group Mismatches) Regulations 2017 and come into force on 29th December 2017.

(2) The Regulations have effect for periods of account(b) of a worldwide group(c) that begin on or after 1 April 2017.

(3) For the purposes of these Regulations, “the specified amounts” means—

- (a) the net group-interest expense(d),
- (b) the adjusted net group-interest expense(e),
- (c) the qualifying net group-interest expense(f), and
- (d) the group-EBITDA(g).

Loan relationship accounted for at fair value

2.—(1) This regulation applies where on 1 April 2017 a company is a party to a loan relationship which is dealt with—

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- (a) 2010 c. 8; section 495 was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017 (c. 32). The power to make regulations is conferred on “the Commissioners” which is defined in section 494 as meaning the Commissioners for Her Majesty's Revenue and Customs.
 - (b) “Period of account” of a worldwide group is defined in section 480 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.
 - (c) “A worldwide group” is defined in section 473 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.
 - (d) “Net group-interest expense” is defined in section 410 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.
 - (e) “Adjusted net group-interest expense” is defined in section 413 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.
 - (f) “Qualifying net group-interest expense” is defined in section 414 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.
 - (g) “The group-EBITDA” is defined in section 416 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.

- (a) in the company's accounts on an amortised cost basis of accounting, and
- (b) in the financial statements(a) of the worldwide group of which the company is a member—
 - (i) on the basis of fair value accounting(b), or
 - (ii) as a hedged item in a designated fair value hedge where the carrying value of the hedged item is adjusted for changes in fair value attributable to the hedged risk.

(2) For the purpose of calculating the specified amounts, the financial statements of the worldwide group are treated, in relation to the loan relationship, as having been drawn up on an amortised cost basis of accounting.

(3) In this regulation, “amortised cost basis of accounting”, in relation to a company's loan relationship, means a basis of accounting under which an asset or liability representing the loan relationship is measured in the company's balance sheet at its amortised cost using the effective interest method.

(4) In paragraph (3), “effective interest method” has the meaning given by international accounting standards.

Debt buy-back

3.—(1) This regulation applies where—

- (a) on 1 April 2017 a loan relationship exists between two companies which are members of the same worldwide group,
- (b) the loan was previously recognised in the financial statements of the worldwide group,
- (c) the loan was derecognised in the financial statements of the worldwide group when—
 - (i) a company in the worldwide group became party as creditor to the loan relationship, or
 - (ii) the company which is party to the loan relationship as creditor became a member of the worldwide group, and

neither section 361 or 362 of the Corporation Tax Act 2009(c) applied on the occasion of either of those events, and

- (d) a gain or loss was recognised in the financial statements of the worldwide group in respect of the derecognition.

(2) For the purpose of calculating the specified amounts, an amount equal to the gain or loss recognised in the financial statements of the worldwide group in respect of the derecognition is treated as brought into account on a just and reasonable basis over the remainder of the term of the loan.

Employer asset-backed pension contribution

4.—(1) This regulation applies where in relation to a company which is a member of a worldwide group, a finance charge arises in respect of a finance arrangement which would be an acceptable structured finance arrangement in connection with a contribution paid by an employer under a registered pension scheme in respect of which the employer is entitled to relief under Chapter 4 of Part 4 of the Finance Act 2004(d) and that finance charge—

(a) “Financial statements” of a worldwide group is defined in section 479 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.

(b) “Fair value accounting” is defined in section 494 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.

(c) 2009 c. 4; section 361 was amended by paragraph 35 of Schedule 7 to the Finance (No. 2) Act 2015 (c. 33), section 362 was amended by section 23 of the Finance Act 2012 (c. 14) and paragraph 38 of Schedule 7 to the Finance (No. 2) Act 2015.

(d) 2004 c. 12.

- (a) is treated as interest payable under a transaction or a loan relationship under any of the following provisions of the Corporation Tax Act 2010(a)—
 - (i) section 761(3) (deemed loan relationship if borrower is a company),
 - (ii) section 762(3) (deemed loan relationship if borrower is a partnership with corporate member),
 - (iii) section 766(3) (deemed loan relationship), or
 - (iv) section 769(3) (deemed loan relationship),
- (b) is a tax-interest expense amount(b) of the company, and
- (c) is not recognised as a relevant expense amount(c) in the financial statements of the worldwide group.

(2) For the purpose of calculating the specified amounts, an amount equal to the finance charge is treated as brought into account as if it were a relevant expense amount recognised in the financial statements of the worldwide group.

(3) In paragraph (1), “acceptable structured finance arrangement” has the meaning given in section 196C (employer asset-backed contributions: “acceptable structured finance arrangement” (1)), section 196E (employer asset-backed contributions: “acceptable structured finance arrangement” (2)) or section 196G (employer asset-backed contributions: “acceptable structured finance arrangement” (3)) of the Finance Act 2004(d), as the case may be.

Justin Holliday
Nick Lodge

7th December 2017

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for transitional adjustments in connection with new Part 10 of the Taxation (International and Other Provisions) Act 2010 inserted by the Finance (No. 2) Act 2017 which make provision for the restriction of relief for interest and finance costs of multinational companies. The Regulations make provision for adjustments to calculations under Part 10 where the accounts of the worldwide group and the accounts of a company in the group give rise to mismatches on the commencement of the new provisions.

The Regulations have effect for periods of account of a worldwide group that begin on or after 1 April 2017, authority for the limited retrospective effect is given by section 495(2) of the Taxation (International and Other Provisions) Act 2010.

Regulation 2 makes provision for the financial statements for a worldwide group to be treated as being prepared on the basis that they recognise a loan relationship on an amortised cost basis of accounting where the loan relationship is subject to fair value accounting in the worldwide group’s financial statements and the amortised cost basis of accounting in the financial statements of the company which is party to the loan relationship.

Regulation 3 makes provision where a loan relationship exists between two companies in a worldwide group which was derecognised prior to the commencement of the new corporate interest restriction provisions when the loan became an intra-group loan. Provision is made for any gain or loss recognised in the financial statements of the worldwide group on derecognition of the loan relationship to be treated as brought into account over the remainder of the term of the loan.

(a) 2010 c. 4.

(b) “Tax-interest expense amount” is defined in section 382 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.

(c) “Relevant expense amount” is defined in section 411 of the Taxation (International and Other Provisions) Act 2010, which was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017.

(d) 2004 c. 12. Sections 196C, 196E and 196G were inserted by paragraph 15 of Schedule 13 to the Finance Act 2012 (c. 14).

Regulation 4 makes provision to deal with mismatches in respect of finance charges arising in relation to certain finance arrangements in connection with a contribution paid by an employer under a registered pension scheme in respect of which the employer is entitled to relief under Chapter 4 of Part 4 of the Finance Act 2004.

A Tax Information and Impact Note (TIIN) covering this instrument was published on 5 December 2016 alongside the draft clauses and explanatory notes for the Finance Bill 2017 and is available on the website at: <https://www.gov.uk/government/publications/corporation-tax-tax-deductibility-of-corporate-interest-expense/corporation-tax-tax-deductibility-of-corporate-interest-expense>. It remains an accurate summary of the impacts that apply to this instrument.

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