

2012 No. 3111

CORPORATION TAX

The Tax Treatment of Financing Costs and Income (Correction of Mismatches: Partnerships and Pensions) Regulations 2012

Made - - - - *14th December 2012*
Laid before the House of Commons *17th December 2012*
Coming into force - - *7th January 2013*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 336A of the Taxation (International and Other Provisions) Act 2010(a).

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Tax Treatment of Financing Costs and Income (Correction of Mismatches: Partnerships and Pensions) Regulations 2012 and come into force on 7th January 2013.

(2) These Regulations have effect in relation to periods of account of the worldwide group beginning on or after 1 January 2012.

This is subject to regulation 4.

Amendment to Part 7 of the Taxation (International and Other Provisions) Act 2010

2.—(1) The Taxation (International and Other Provisions) Act 2010 is amended as follows.

(2) After section 332C(b) insert—

“332D Partnerships: interest in relation to borrowing

(1) This section applies where—

- (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group,
- (b) at any time during the period of account, a liability (“the group liability”) owed to the partnership in respect of borrowing by that member or another member of the worldwide group (“the borrower”) is outstanding, and
- (c) the borrower is a relevant group company.

(2) For the purposes mentioned in subsection (7), the financial statements of the worldwide group for the period of account are to be treated as if—

(a) 2010 c. 8; section 336A was inserted by paragraph 28 of Schedule 5 to the Finance (No 3) Act 2010 (c. 33).

(b) Section 332C was inserted by paragraph 27 of Schedule 5 to the Finance (No 3) Act 2010.

- (a) they did not disclose any amounts falling within section 332(1)(a) to (d) relating to the group liability, and
- (b) they disclosed instead such amounts as would have fallen within that provision had the financial statements been prepared on the following two assumptions.

(3) The first assumption is that, at each time during the period of account at which the group liability was outstanding, each member of the partnership was owed the appropriate proportion of the group liability by the same person, and on the same terms, as it was in fact owed to the partnership.

(4) In subsection (3) “the appropriate proportion”, in relation to a member of the partnership at any time, is the proportion of the partnership’s profits to which the member is entitled at that time under the partnership’s profit sharing arrangements.

(5) The second assumption is that, during the period of account, each member of the partnership received the appropriate proportion of any expenses relating to the group liability.

(6) In subsection (5) “the appropriate proportion” in relation to a member of the partnership, is the proportion of the partnership’s profits to which the member is entitled, over the period of account of the worldwide group, under the partnership’s profit sharing arrangements.

(7) The purposes referred to in subsection (2) are the purposes of—

- (a) this Chapter, and
- (b) any other provision of the Corporation Tax Acts^(a) so far as it applies for the purposes of this Chapter.

332E Partnerships: other income

(1) This section applies where—

- (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group,
- (b) during the period of account, the partnership receives income (“the relevant partnership income”) in relation to finance leases or debt factoring relating to that member or another member of the worldwide group (“the borrower”), and
- (c) the borrower is relevant group company.

(2) For the purposes mentioned in subsection (5), the financial statements of the worldwide group for the period of account are to be treated as if—

- (a) they did not disclose any expenses relating to the relevant partnership income, and
- (b) they disclosed instead such amounts as would have fallen within section 332(1)(e) or (f), had the financial statements been prepared on the following assumption.

(3) The assumption is that, during the period of account, each member of the partnership received the appropriate proportion of the expenses relating to the relevant partnership income.

(4) In subsection (3) “the appropriate proportion”, in relation to a member of the partnership, is the proportion of the partnership’s profits to which the member is entitled, over the period of account of the worldwide group, under the partnership’s profit sharing arrangements.

(5) The purposes referred to in subsection (2) are the purposes of—

- (a) this Chapter, and
- (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.”

(a) “The Corporation Tax Acts” is defined in Schedule 1 to the Interpretation Act 1978 (c. 30) as meaning the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions”.

Amendment to the Tax Treatment of Financing Costs and Income (Correction of Mismatches) Regulations 2010

3.—(1) The Tax Treatment of Financing Costs and Income (Correction of Mismatches) Regulations 2010(a) are amended as follows.

(2) After regulation 16 insert—

“Employer asset-backed pension contribution mismatches

16A.—(1) This regulation applies in relation to a finance charge if the conditions in regulation 16B are satisfied.

(2) In the period of account in which the finance charge is brought into account by the relevant group company, an amount equal to that finance charge shall be included in the available amount to the extent that it is not included in the available amount for that period of account by virtue of any other enactment.

Conditions for the application of regulation 16A

16B.—(1) The first condition is that the finance charge is treated as interest payable under a transaction or a loan relationship under any of the following provisions of the Corporation Tax Act 2010(b)—

- (a) section 761(3) (deemed loan relationship if borrower is a company),
- (b) section 762(3) (deemed loan relationship if borrower is a partnership with corporate member),
- (c) section 766(3) (deemed loan relationship), or
- (d) section 769(3) (deemed loan relationship).

(2) The second condition is that the finance charge is a financing expense of the company.

(3) The third condition is that the finance charge must arise in relation to—

- (a) 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(c) (registered pension schemes: tax reliefs and exemptions), or
- (b) 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 if the contribution was paid on or after 22 February 2012 and in respect of which the employer is entitled to relief under Chapter 4 of Part 4 of the Finance Act 2004.

(4) In paragraph (3), “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.”

Election that these Regulations do not apply

4.—(1) A worldwide group may elect that either or both of regulations 2 and 3 do not apply in relation to periods of account of the worldwide group beginning before 14th December 2012.

(a) S.I. 2010/3025.

(b) 2010 c. 4.

(c) 2004 c. 12.

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

- (2) The election—
- (a) is irrevocable,
 - (b) must be made in writing to HMRC by the reporting body within 12 months from the end of the first period of account of the worldwide group that begins on or after 14th December 2012,
 - (c) must be signed by the proper officer of the reporting body or such other person as may have the express, implied or apparent authority of the reporting body to make an election under this regulation.

(3) In paragraph (2), “the reporting body” has the meaning given by section 289 of the Taxation (International and Other Provisions) Act 2010.

(4) Subsections (3) and (4) of section 108 of the Taxes Management Act 1970(a) (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this regulation as they apply for the purposes of that section.

Nick Lodge
Jim Harra

14th December 2012

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

(a) 1970 c. 9; section 108(3) was amended and subsection (4) was inserted by paragraph 2 of Schedule 41 to the Finance Act 2003 (c. 14).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 7 of the Taxation (International and Other Provisions) Act 2010 (“TIOPA”) applies to groups of companies. It provides for the disallowance for corporation tax purposes of net financing deductions of the UK members of a group to the extent that the total of those deductions exceeds the “available amount”. The available amount is the sum of the amounts disclosed in the financial statements of the worldwide group for the relevant period of account in respect of matters specified in section 332(1) of TIOPA 2010 or in regulations made under that section.

A mismatch may occur if the amount disclosed in the financial statements of the worldwide group in respect of a liability differs from the amount accounted for in respect of the same liability by the UK member of the worldwide group. These Regulations alter the way in which the available amount is calculated in certain cases where there is a mismatch.

Regulation 1 provides for citation, commencement and effect. Under the power conferred by section 336A(4) of TIOPA 2010, these Regulations have effect in relation to periods of account beginning on or after 1st January 2012. But a worldwide group may elect for either or both of regulations 2 and 3 to have effect only for periods of account beginning on or after the day on which they are made.

Regulation 2 amends the Taxation (International and Other Provisions) Act 2010 by inserting sections 332D and 332E. These provisions deal with mismatches where a member of a worldwide group is a member of a partnership which has made a loan to a member of the group or receives income in relation to finances leases or debt factoring relating to a member of the group.

Regulation 3 amends the Tax Treatment of Financing Costs and Income (Correction of Mismatches) Regulations 2010 (S.I. 2010/3025) by inserting regulations 16A and 16B into those Regulations. These provisions 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 has not been prepared for this Instrument as it contains no substantive changes to tax policy.

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STATUTORY INSTRUMENTS

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