

Technical Note

Draft regulations - available amount mismatch regulations

Background

Finance (No 2) Bill 2010 inserts into Chapter 9 of Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) a regulation making power under which the available amount for a worldwide group can be adjusted if the account amount and tax amount in respect of the same matter are not the same amount. The legislation is at paragraph 28 Schedule 5 of the Bill (as amended).

Legislative context

Part 7 of TIOPA 2010 is one element of a package of measures introduced as part of the government's review of the taxation of the foreign profits of companies.

The amount of interest and other financing expenses that a group of UK companies (including permanent establishments of non-resident companies that are trading in the UK) may bring into account for the purpose of calculating their profits for Corporation Tax purposes is calculated by reference to the worldwide group to which the UK companies belong. The worldwide group may consist solely of UK companies and the UK permanent establishments of non-UK resident companies or it may include non-resident companies which do not have UK permanent establishments.

The available amount for the period of account of the worldwide group is the sum of the amounts disclosed in the financial statements of the group for that period.

Policy background

The purpose of these draft regulations is to deal with mismatches that arise in two separate circumstances. The first circumstance is where there is a difference in the amount of a financial liability of a relevant group company disclosed in the accounts of the worldwide group and the amount of profit or loss brought into account for the purposes of Part 5 of the Corporation Tax Act 2009 (CTA 2009 loan relationships). In such circumstances the available amount can be adjusted (either by addition or subtraction) to eliminate the mismatch.

The second circumstance is where a 'late interest' debit is treated under section 373 CTA 2009 as not accruing until it is paid. The regulations allow the late interest to be subtracted from the available amount. There are already provisions within the debt cap rules that deal with late interest accruing prior to the introduction of the debt cap rules – see the transitional provisions in paragraph 9 Schedule 9 FA2009. The question is whether a similar rule would be suitable for interest subject to section 373 CTA 2009 after the introduction of debt cap. An adjustment to the available amount will potentially affect the amount of financing income exempted from the debt cap rules; it is not proposed that any consequential adjustments be made to the exemption of financing income.

The draft regulations illustrate a way such an adjustment can be achieved. When considering the regulations please note that the commencement dates for late interest in regulations 6(4) and 8(4) are illustrative and will require revision if the late interest regulations are made. Comments are invited on the draft regulations overall and in particular on the following questions.

Whether, given the transitional provisions already deal with late interest subject to section 373 CTA 2009 before the introduction of debt cap, it is worthwhile to make regulations for late interest after the introduction of debt cap?

The draft regulations show one way that the available amount could be adjusted for late interest, is there an alternative way that would be easier to administer?

The regulations include the right to make elections for regulations 3, 5 or 7 not to apply. An Impact Assessment will be published in respect of these regulations and we would be interested to have the following information.

Making the elections will have a one-off cost, what would be your estimate of the cost involved for the group?

[Read the draft regulations \(PDF 48K\)](#)

Comments on the draft regulations should be emailed to the following HMRC contacts **by 22 November 2010**.

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or

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