HMRC - CFM98240 - Rules: Use And Time-Expiry Of Brought Forward Interest Allowance

A group’s interest capacity is the aggregate of the interest allowance of the period and any unused interest allowance brought forward from an earlier period that is available in the current period of account (or the de minimis limit, should that be higher).

The carry-forward may be restricted through time-expiry. In essence there is a five-year rule. The detail of the operation of this limitation on carry forward is described in this page of guidance.

Originating and receiving periods of account

The rules determine how much of the allowance for an “originating period of account” is available in a “receiving period of account” taking into account of the use of the interest allowance and its time expiry.

Amount of interest allowance that is available in a later period - S393

The requirement for full interest restriction returns

An overriding limitation is that interest allowance for the receiving period is only available in a receiving period if a interest restriction return has been submitted for the originating period and any intervening period of account. An abbreviated interest restriction return is not sufficient. However, so long as the group has submitted an abbreviated interest restriction return, an extended time limit allows a full interest restriction return to have effect if it is received within five years of the end of the period of account.

Processes that reduce the amount available in a receiving period

There are two reasons why interest allowance may not be available in a later period. Firstly the interest allowance may already have been used, either in the originating period itself or in an intervening period of account. Secondly, the interest allowance may be time-expired for that period.

To achieve this the amount that is available in the receiving period is the lower of two amounts, A and B:

Amount A is simply the interest allowance for the originating period, less the amounts used in the originating period or any intervening period. If all of the interest allowance is used in the originating period, there can be nothing to carry forward to any later period and in which case A is zero.

Amount B takes into account time-expiry and is simply the amount that is unexpired in the receiving period.

Use of interest allowance

Use of interest allowance in the originating period - S394(2)

It is necessary to determine how much interest allowance is used in its originating period.

This is the lower of two amounts:

The interest allowance for that originating period (this simply has the effect that the amount used can never exceed the amount capable of being used); and

The sum of (i) the aggregate net tax-interest expense for the originating period; and (ii) the total amount of tax-interest expense amounts reactivated in the originating period.

Of these two amounts, amount (i) is the amount of the interest allowance that offsets the net tax-interest expense of the current period, thereby limiting the total disallowed amount for that period, potentially to zero. Amount (ii) represents the additional amount of the interest allowance, above and beyond what is required to reduce the total disallowed amount to zero, which is then utilised to reactivate tax-interest amounts of UK group companies that were disallowed in earlier periods.

A consequence of this definition is that there can be an amount of interest allowance available to carry forward only if there is no total disallowed amount for the originating period and all of the previously disallowed interest of the UK group companies that is capable of being reactivated in a period, has been reactivated - see CFM98620 and CFM98680.

Use of interest allowance in an period of account other than the originating period - S394(3)-(5)

The amount used in a period other than the originating period (the “receiving period”), which may be the period to be tested or an earlier intervening period, is the lower of two amounts. These are:

The amount of the interest allowance of the originating period that is available, applying the rules in S393. To compute this it is necessary to take account of the use of interest allowance in the originating period and any earlier intervening period.

The “relevant part” of the aggregate net tax-interest expense for the receiving period.

Computing this relevant part requires the application of another simple formula, which has the effect of applying priority rules. The amount is A-B-C, where:

A is (as one would expect) the aggregate net tax-interest expense for the receiving period;

B is the interest allowance of the group for the receiving period (with the effect that this is used first before any amounts brought forward); and

C is the interest allowance for any period earlier than the originating period.

The effect of subtracting amount C is that, once the interest allowance for the receiving period has been used to access tax-interest in the receiving period, interest allowance of an earlier originating period is used before interest allowance of a later originating period - first in, first out.

Example 1, showing use of interest allowance

Amount of interest allowance that remains unexpired in the receiving period - S395

S395 applies a five year rule. The principle here is straight-forward, that interest allowance expires after five years. However, the mechanics of the legislation is not totally straightforward. This is because it has to deal with cases where there are not five succeeding period of account each of 12 months long. For instance, this could be an issue where there is a change in the date to which the group draws up its financial statements.

To understand the mechanical provisions it is helpful to step back and ask two questions:

How much of the originating period will have expired before you get to the start of the receiving period.

How much of the receiving period cannot access any of the interest allowance from the originating period because it falls more than five years after the end of the originating period.

Two simple cases

The first simple case (S395(2)) is where the receiving period:

begins five years or less after originating period begins; and also

ends five years or less after originating period ends.

In this case

So for example the group has period of account all 12 months long ending on 31 December 2018, 2019, 2020, 2021, 2022 and 2023. If the first of these period is the originating period and any of those subsequent periods is the receiving period, all of the interest allowance for the period to 31 December 2018 will remain unexpired for each of those periods.

The second simple case (S395(3)) is where the receiving period begins five years or more after the end of the originating period. In this case

So the example above, where the receiving a period of account (no matter what length) begins on 1 January 2024, all of the interest allowance for the originating period to 31 December 2018 will have expired and cannot be used in that period

More complex cases

If neither of these two simple cases is in point it becomes necessary to apply formulae.

There are two formulae to consider. The formula in s395(5) deals with the issue of a receiving period that begins later than the fifth anniversary of the start of the originating period. Should the receiving period end

The formula in s 395(7) deals with the issue of a receiving period that ends more than five years after the end of the originating period. Should the receiving period also begin

It is more likely, with a complex case, that the receiving period will both begin more than five years after the originating period begins and end more than five years after the originating period ends. In this case s395(8) requires both formulae to be applied and the lower of the two amounts calculated is the unexpired interest allowance of the originating period

The S395(5) limit

Turning to the formulae, the formula in subsection (5) where the receiving period:

For this to be the case, the receiving period must be shorter than the originating period.

So, if the originating period is the year to 31 December 2018, this will apply if the receiving period is, say the 8 months from 1 March 2023 to 31 October 2023.

The formula is expressed as:

Unexpired amount = (A-B) x X/Y.

(A-B) is the amount of the interest allowance for the

X is the number of days from the beginning of the receiving period to the fifth anniversary of the end of the originating period

Y is the number of days in the

Example 2, showing s393(5) limit

The worldwide group has a long period of account running from 1 January 2018 to 30 April 2019 (the originating period). The receiving period considered in this example is the 12 months from 1 April 2023 to 31 March 2024.

The interest allowance for the originating period is £800m. Its aggregate net tax-interest expense for the period is £606m. Accordingly, in the formula, A is £800m and B the lower of £800m and £606m, so A-B is £194m. This is the amount that has to be time apportioned by the formula.

X is the number of days from the beginning of the receiving period (1 April 2023) to the fifth anniversary of the end of the originating period, (30 April 2024). Note that this falls after the end of the receiving period. This is 396 days.

Y is the number of days in the originating period, 1 January 2017 to 30 April 2019. This is 485 days.

So the amount unexpired is (£800m - £606m) x 396/485 = £158m.

Also if, say, £90m of interest allowance for the originating period had been used in receiving period of account falling in the period from 1 May 2018 to 31 March 22, only £94m would remain unused (amount A in S393(3)) and as this is lower than the £158m calculated above (amount B in S392(4)), this would then be the amount available in the receiving period, rather than the £158m above. This is the effect of S393(2).

The S395(7) limit

S395(6) applies the formula in subsection (7) where the receiving period:

For this to be the case, the receiving period must be longer than the originating period.

So, if the originating period is the year to 31 December 2018, this will apply if the receiving period is, say a 15 month periods of account beginning on 1 December 2023 and ending on 29 February 2024.

The formula is expressed as:

Unexpired amount = (C-D) x X/Z.

(C-D) is the amount of

C is the aggregate net tax-interest expense for the receiving period.

D the lower of the aggregate net tax-interest for the receiving period and the interest allowance for that period.

If there is no interest restriction in the receiving period though the availability of sufficient allowance for the period, C will equal D, C-D will be zero and there is no amount left to apportion.

As in s393(5), X is the number of days from the beginning of the receiving period to the 5th anniversary of the end of the originating period; but

Z is the number of days in the

Example 3, showing s393(7) limit

The worldwide group has a short period of account running from 1 February 2018 to 30 November 2018 (the originating period). Eventually it settles on a 31 December accounting date. The receiving period in question is the 12 months from 1 January 2023 to 31 December 2023.

This time the limitation is on the aggregate net tax-interest of the receiving period that is capable of being accessed by interest allowance for the receiving period.

In the formula in s395(7), C is the aggregate tax-interest expense for the receiving period, £600m. D is the interest allowance for the receiving period, £454m. The difference between the two, C-D, £146m is the maximum aggregate tax-interest expense for the receiving period that might be accessed by interest allowance carried forward from earlier periods of accounts. It is this amount that is time-apportioned.

X, as in the s395(5) formula, is the number of days from the beginning of the receiving period (1 January 2023) to the fifth anniversary of the end of the originating period, (30 November 2023). Note that this falls before the end of the receiving period. This is 334 days.

Z is the number of days in the receiving period, 1 January 2023 to 31 December 2019. This is 365 days.

So the amount unexpired is £146m x 334/365 = £133.6m.

Although, arithmetically, this could be more than the interest allowance of the originating period, this has no practical effect, because the limit will then be Amount A in S393(3), the interest allowance that remains unused, rather than the amount that is unexpired.

Where both limits must be applied, s395(8)

Section 395(8) applies where the receiving period

ends 5 years or

In practice this is more likely to be the case than the scenarios envisaged in subsections (5) and (7), because it can apply where the two periods of account are of the same length.

Where the subsection applies, subsection (9) requires the application of both the test in in subsection (5) - by time apportionment of the interest allowance of the originating period - and that in subsection (7) - time apportionment of the aggregate net tax-interest of the receiving period. The interest allowance of the originating period is the lower of the two amounts.

Example 4

This example involves a succession of consecutive receiving periods

Originating period year to 31 December 2018

Interest allowance £1,000m, aggregate net tax-interest expense £635m

Receiving period 1, year to 31 March 2023

Receiving period 2, year to 31 March 2024

Interest allowance £417M, Aggregate net tax-interest expense £600m

Receiving period 3, year to 31 March 2025

Receiving period 1 (year to 31 March 2023) begins five years or less after the originating period begins and ends less than five years after the originating period ends, so S395(2) applies and

Receiving period 3 (year to 31 March 2025) begins five years or more after the originating period ends, so S395(3) applies and

Receiving period 2 (year to 31 March 2024) begins five years or more after the originating period begins (but not more than five years after it ends) and ends 5 years or more after the originating period ends, so S395(8) applies and the two tests in S395(5) and (7) must be applied.

Applying S595(5), (A-B) is the interest allowance of the originating period, £1,000m, less the aggregate net tax-interest expense for the period, £635m, that is £365m.

X is the number of days from the beginning of the receiving period (1 April 2023) to the fifth anniversary of the end of the originating period (31 December 2023). So X = 275. Y is the number of days in the originating period.

Accordingly the result of the formula is (£1,000m - £635m) x 275/365 = £275m

Applying S395(7), (C-D) is the aggregate net tax-interest expense of the receiving period, £600m, less the interest allowance of the receiving period, £417m, that is £183m.

X is the number of days from the beginning of the receiving period (1 April 2023) to the fifth anniversary of the end of the originating period (31 December 2023). So X = 275. Z is the number of days in the receiving period, 366 (leap year effect).

Accordingly the result of the formula is £183m x 275/366 = £137.5m

Thus the amount of the interest allowance for the year to 31 December 2018 that is unexpired is the lower amount, £137.5m

Example 5

The facts are exactly the same as in Example 4 except that in the receiving period from 1 April 2023 to 31 March 2024, the interest allowance is £200m and the aggregate net tax-interest expense £600m.

As in Example 4, all of the tax allowance of the originating period (year to 31 December 2018) is unexpired in receiving period 1, year to 31 March 2023, but none is unexpired in receiving period 3, year to 31 March 2025.

For receiving period 2, year to 31 March 2025, the formula in S395(5) gives the same result as in example 4.

However, but applying S395(7), C-D is now £400m - compared to example 4, in the receiving period, there is higher amount of aggregate tax-interest that is not offset by interest allowance of the receiving period itself. As in Example 4, X is 275 and Z is 366. Accordingly, applying s395(7) this limit is (£600m - £200m) x 275/366 = £300.5m.

It follows that the limit is provided by applying the formula in S395(5). This limit is as in Example 4, (£1,000m - £635m) x 275/365 = £275m.

Thus the amount of the interest allowance for the year to 31 December 2018 that is unexpired is the lower amount, £275m.

Example 6

This is an expanded version of Example 2, showing three consecutive periods of account.

The originating period is a long period of account running from 1 January 2018 to 30 April 2019. The interest allowance for the originating period is £800m. Its aggregate net tax-interest expense for the period is £606m.

The receiving period to be considered are

Receiving Period 1: 1 May 2022 to 31 March 2023

Receiving Period 2: 1 April 2023 to 31 March 2024

Receiving Period 3: 1 April 2024 to 30 November 2024, in which:

Aggregate net tax-interest expense = £200m, interest allowance = £78m.

Receiving period 1 (1 May 2022 to 31 March 2023) begins 5 years or less after the originating period begins and ends less than 5 years after the originating period ends, so S395(2) applies and

For receiving period 2 (Year to 31 March 2024), S395(5) applies and £158m ((£800m - £606m) x 396/485) of the interest allowance of the originating period is treated as unexpired, see Example 2.

Receiving period 3 runs from 1 April 2024 to 31 December 2024. It begins more than 5 years after the originating period begins (but not more than 5 years after it ends) and ends more than 5 years after the originating period ends, so s395(5) so S395(8) applies and the two tests in S395(5) and (7) must be applied.

Applying S395(5), (A-B) is the interest allowance of the originating period, £800m, less the aggregate net tax-interest expense for the period, £606m, that is £194m.

X is the number of days from the beginning of the receiving period (1 April 2024) to the fifth anniversary of the end of the originating period (30 April 2024). So X = 30. Y is the number of days in the originating period, 485.

Accordingly the result of the S395(5) formula is (£800m - £606m) x 30/485 = £12m.

Note that it is not a case of apportioning the interest allowance for the originating period between receiving periods 2 and 3. Rather, the s385(5) excludes access to interest allowance of the originating period by reference to the extent that the receiving period begins later than the fifth anniversary of the beginning of the originating period, irrespective of the length of the receiving period. So only a small part of the interest allowance is unexpired, reflecting the 30 days in the receiving period that still remains after that fifth anniversary, the restriction then being the proportion that period bears to the length of the originating period.

Applying S395(7) to receiving period, (C-D) is the aggregate net tax-interest expense of the receiving period, £200m, less the interest allowance of the receiving period, £110m, that is £90m.

X is the number of days from the beginning of the receiving period (1 April 2024) to the fifth anniversary of the end of the originating period (30 April 2024). So X = 30. Z is the number of days in the

Accordingly the result of the S395(7) formula is (£200m - £78m) x 30/244 = £15m.

The amount of the interest allowance that remains unexpired in receiving period 3 is the lower of these two figures, £12m. This will be amount B in 393(4).

This then has to be compared with the amount of the interest allowance of the originating period that has not already been used. The interest allowance was £800m and £606m of this was used in the originating period itself, leaving £194m. If £30m was used in all of the periods account in the periods of account up to 31 March 2023, that would leave £166m unused for receiving period 2, from 1 April 2023 to 31 March 2024.

So in that period Amount A in s393(3) would be £166m and amount B in S393(4) would be £158m. The amount available would therefore be the lower, £158m. If it the aggregate net tax-interest expense in that period exceeded the interest allowance for the period to a sufficient extent to allow the full £158m unexpired in the receiving period to 31 March 2024 to be used, there would still be £8m unused.

This £8m would then be amount A for receiving period 3, to 31 December 2014, for which amount B is £12m. Applying S393(2), this £8m would then be available to use in that receiving period.

Note that it is purely the elapse of time that causes interest allowance to expire, not the use of interest allowance equal to the amount unexpired in the previous period. So even though interest allowance for a long originating period from 1 January 2018 to 30 April 2019, equal to the amount unexpired as at 1 April 2023 (£158m) was used in the period from 1 April 2023 to 31 March 2023, there was still £12m remaining unexpired in the receiving period beginning on 1 April 2024.

Previous page

Next page