HMRC - CFM98410 - Administration: Overview

This guidance deals primarily with the machinery provisions, in TIOPA10/SCH7A, but does not exactly follow the order of the paragraphs of the schedule.

The interest restriction provisions in TIOPA10/PT10 differ from the normal corporation tax regime in that the computational provisions work mainly at the level of the worldwide group. Only once the group level computations have been made can disallowances of net tax-interest expense, or reactivations of previously disallowed amounts, be allocated to UK group companies. SCH7A contains legislation designed to enable the efficient administration of these provisions.

Where a group is not subject to interest restriction and neither the group nor HMRC have appointed a reporting company, the group has no filing obligation. However, if a group is subject to interest restriction in a period of account or needs to make an election that can only be made in an interest restriction return, or may wish to apply unused interest allowance for a period in a later period, it will need to appoint a reporting company and file an interest restriction return for the period.

Interest Restriction Return

Central to these administrative provisions is the interest restriction return for a worldwide group’s period of account. This contains basic information about the composition of the worldwide group, the key numbers from the group level computation, and the allocations of disallowances or reactivations to members of the group. In addition, a number of elections, which vary the manner in which the computational rules are applied, may be included in the return. Where there are no disallowances or activations it may be possible to file an abbreviated return. The group has the freedom to file a revised return up to 36 months after the end of a period of account.

Where no interest restriction is due, a revised return may be submitted up to 60 months after the end of a period to establish the amount of the unused interest allowance for the period for potential use in a later period.

The contents of the interest restriction return and some detailed computational provisions are found in SCH7A/PT2.

The period of account is normally the period for which the ultimate parent of the group draws up consolidated financial statements. This may not necessarily coincide with the CT Accounting Periods of UK resident members of the group.

Preliminary consideration of whether an interest restriction arises

HMRC expects that groups that have aggregate net tax-interest expense clearly less than the de minimis amount, or which have aggregate net tax-interest income, will be able to establish with sufficient certainty that they are not subject to any interest restriction without the need to carry out detailed calculations. This may involve groups making reasonable estimates of their tax-interest position when considering whether the group is subject to any interest restriction in the return period, and whether an abbreviated return is appropriate. This administrative point is distinct from the use of estimates within a full interest restriction return (TIOPA10/SCH7A/PARA27).

Similarly, some groups with an aggregate net tax-interest expense above the de minimis amount may also be able to establish with sufficient certainty that they are not subject to any interest restriction, without the need to carryout detailed calculations. This will be the case where aggregate net tax-interest expense is above the de minimis amount, but clearly less than both 30% of tax-EBITDA and adjusted net group-interest expense (ANGIE). This may involve groups making reasonable estimates of aggregate net tax-interest expense, aggregate tax-EBITDA and ANGIE.

The same approach, of making a reasonable estimate rather than a precise calculation, may also be taken in respect of ANGIE for a group that could be subject to interest restriction. This would be appropriate where aggregate net tax-interest expense is close to or exceeds 30% of tax-EBITDA, but is clearly much less than ANGIE.

Groups with a customer compliance manager may wish to discuss their approach with HMRC as part of real-time working. For companies to which the Senior Accounting Officer provisions in FA09/SCH46 apply, appropriate tax accounting arrangements will include procedures to determine whether the group is subject to interest restriction, and if it is, to calculate that restriction accurately.

Note that it might be advantageous for a group to appoint a reporting company and submit an interest restriction return even where no interest restriction is due. This is because it may be possible to use unused interest allowance for a period of account which commences up to 60 months after the end of a period, but only if a full interest restriction return is filed for the earlier period of account and all intervening periods. It is possible for a group to submit abbreviated return

Reporting company

The responsibility to file an interest restriction return falls on the reporting company. This company would normally be appointed by the group. A company so appointed stays in place for subsequent periods of account. HMRC may appoint a reporting company for a period of account where no reporting company is in place, or may replace a reporting company that does not perform its obligations. If for some reason a group has no reporting company, but a disallowance is due, each UK group company must file its company tax return based on a pro-rata apportionment of the group’s disallowance (which it will need to calculate). The procedures for the appointment of a reporting company are found in SCH7A/PT1.

It is anticipated that, in most cases, disallowances will be allocated at the discretion of the reporting company. However, as groups are defined primarily by reference to IFRS accounting, it is possible that a conflict of interest might arise, for instance, where a UK group company has a substantial external shareholding. Accordingly, where a company does not consent to discretionary allocation by the reporting company, either by not supporting the appointment of the reporting company, or by withdrawing consent, it may be allocated no more than a pro-rata amount of the disallowance (see SCH7A/PARA23 and SCH7A/PARA24).

Apportionments of interest reactivations are made on a full interest restriction return and only at the discretion of the reporting company. Rules determining the overall amount that may be reactivated for a group, and the maximum amounts that may be activated per company, including cases where company accounting periods do not coincide with the group period of account, and cases where companies are joining and leaving the group, are dealt with in PARAS25 and 26.

Any disallowances or reactivations allocated in an interest restriction return automatically flow through as amendments to a group company’s tax return, regardless of any time limits that might otherwise apply. There is a default order for identifying the nature of tax-interest amounts that are disallowed or reactivated at company level, which the company may elect to vary in its own tax return.

Enquiry Provisions

There are specific enquiry provisions in SCH7A/PT4, based on the company tax return enquiry procedures in FA98/SCH18, but modified to deal with the interest restriction returns. The serving of an interest restriction return enquiry notice does not open a company tax return enquiry into each UK group company, and is separate from any such enquiry. However, on settlement of an interest restriction return enquiry, individual company returns may be amended. The scope of an enquiry may include the composition of a group, and there are procedures to deal with cases where HMRC considers that the composition of the group may have been incorrectly stated in the return. There are specific closure procedures, which may include the appointment of a reporting company for a different group from that outlined in the original interest restriction return.

SCH7A/PT5 provides for HMRC determinations, either where a reporting company fails to submit a return, or where a group fails to amend an interest restriction return in accordance with a closure notice.

There are penalties for failure to submit returns and, in some circumstances, for incorrect returns in SCH7A/PT2. These specific rules apply in place of the general provisions in FA09/SCH24. There is a duty keep and preserve certain records, and penalties for failing to do so, set out in TIOPA10/SCH7A/PT3.

Information powers

There are two sets of information powers. Those in SCH7A/PT6 are exercisable by a reporting company, or a group company, on other members of a group, to gather information needed for filing an interest restriction return or company tax return (where there is no reporting company). Those in SCH7A/PT7 are exercisable by HMRC in checking an interest restriction return. They make reference to certain provisions of FA08/SCH36.

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