HMRC - CFM98650 - Company: Disallowances For Non-Consenting Companies

TIOPA10/S375(2) - (5), SCH7A/PARAS 68, 69

In some groups there may be one or more non-consenting companies that have not consented to discretionary allocations of the group’s interest restriction by the reporting company. In such a case the reporting company may submit a full interest restriction return, which states that the group is subject to interest restriction for the period of account to which it relates and in which the statement of allocated interest restriction comprised in the return allocates a disallowance to a non-consenting company for an accounting period. Such an allocation may not exceed the pro-rata share of the interest restriction for the company accounting period - TIOPA10/SCH7A/PARA22(3)(b).

In the absence of an election, where a company tax return has been submitted but becomes incorrect because of the submission of an interest restriction return, a non-consenting company is required to amend its company tax return in the same manner as a consenting company.

Where the company makes the election permitted by S375(3), and its pro-rata share of the total disallowed amount is not nil, it must leave out of account its pro-rata share of the group’s disallowance, rather than the amount allocated by the reporting company.

It is anticipated that such elections will be uncommon, because the reporting company may not in any case allocate more than a pro-rata share of the tax-interest restriction in the return. An election might be made, for instance, if the non-consenting company disagrees with the reporting company’s computation of the worldwide group’s interest restriction, or if it considers that the reporting company has not correctly identified the composition of the group and that this has led to the calculation of an incorrect pro-rata amount.

The making of the election by a non-consenting company has no effect on the tax position of the other UK group companies in the worldwide group; the interest restrictions to be given effect in their company tax returns remain as allocated by the reporting company. There is no requirement for the non-consenting company to inform the reporting company of its election. Should HMRC be concerned about any discrepancy, it is open to an officer of Revenue and Customs to open an enquiry into the non-consenting company’s company tax returns for relevant periods, or into the group’s interest restriction return, or both.

The election must be made by:

the filing date for an original interest restriction return (which is determined by PARA7(5) as the later of 12 months after the end of the period of account or 3 months after the date of appointment of the reporting company); or,

if later (most likely in relation to revised interest restriction returns), 3 months from receipt of the interest restriction return by an officer of Revenue and Customs.

The election is made in the non-consenting company’s company tax return (PARA68(a)) and, where a company tax return has already been submitted for the accounting period, the company is permitted by PARA69(1) and (2) to amend its return to include the election, notwithstanding the time limit in FA98/SCH18/PARA15(4). The company must also amend its company tax return to give effect to the election within the same time limit and if it fails to do so, it becomes liable to a penalty of £500 - the procedure described at CFM98640 applies (PARA70A). The penalty is administered in the same way as a penalty for failure to deliver an interest restriction return. As a practical matter, it is anticipated that the making of the election and the amendment of the company tax return will be performed by the company as a single process.

No particular form is required for the election; it must simply be clear and unambiguous. In the computations supporting the company tax return, the company will need to set out its computation of the worldwide group’s interest restriction in the same level of detail as would be included in the statement of calculations in an interest restriction return (PARA21) and set out the calculation of its pro-rata share (PARAS 23 and 24).

An election under S375 may be revoked. In this case the company tax return must be amended accordingly, within the same time limits and potentially subject to the same penalty.

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