HMRC - CFM98654 - Company: Disallowances Where No Compliant Interest Restriction Return

TIOPA10/S376, SCH7A/PARA69

Although it is envisaged that nearly all worldwide groups likely to be impacted by the corporate interest restriction will appoint a reporting company (or failing that HMRC will appoint a reporting company), it is possible that in some cases companies may be subject to interest restriction where there is no reporting company or where no compliant interest restriction return is submitted. These companies will still need to comply with the legislation and disallow tax-interest accounts, where appropriate. The fundamental rules applicable here are found in TIOPA10/S376. This section comes into play where a worldwide group is subject to interest restrictions. It applies to any company that was a UK group company for all or part of a worldwide group’s period of account.

If the group is not subject to interest restriction, and no interest restriction returns are submitted by the group, the UK group company has no obligation to make reference to interest restriction in its company tax return. This would apply, most obviously, to members of a group or stand-alone companies where the aggregate net tax-interest expense (S390) of the worldwide group (which may be a stand-alone company) does not exceed the de minimis amount of £2m per annum (s392(3)).

Section 376 does not come into play until the “relevant date” has passed. If a group has no reporting company the relevant date is 12 months after the end of the period of account of the worldwide group (which does not necessarily coincide with the company’s accounting period). If the appointment of a reporting company has effect, whether that appointment is by the group or by HMRC, the relevant date is the filing date for an (original) interest restriction return, which is the later of 12 months from the end of the period of account or 3 months after the appointment of the reporting company.

Then, for s376 to apply one of three conditions must apply:

No appointment of a reporting company has effect for the period;

The appointment of a reporting company has effect, but no interest restriction return has been submitted; or

The appointment of a reporting company has effect, an interest restriction return has been submitted, but this does not comply with the fundamental requirements set out in TIOPA10/SCH7A/PARA20(3), for instance by containing incorrect figures.

It should be rare for S376 to come into play because an interest restriction return that has been submitted is non-compliant. A return is not rendered non-compliant by containing estimates, so long as these are identified in the return as required by PARA27(2). If a reporting company becomes aware of an error in an interest restriction return, it can submit a revised return within the time limit allowed. This is likely to prove much more efficient than having all the UK group companies subject to restriction apply S376 and will enable the reporting company to make a discretionary allocation of the interest restriction to consenting companies.

The effect of S376 applying is that the UK group company must leave out of account its pro-rata share of the worldwide group’s interest restriction for the accounting period - if not nil. If it has already submitted a company tax return, it must amend it, within 3 months of the relevant date - PARA69(3) and (4). The company must also amend its company tax return to give effect to the election within the same time limit. If it fails to do so it becomes liable to a penalty of £500 and 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.

The computation of pro-rata shares by company and by accounting period is dealt with in SCH7A/PARA 23 and 24, CFM98590 and CFM98600. For identification of amounts left out of account see CFM98660.

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