HMRC - CFM98690 - Company: Identification Of Reactivated Items Of Income

TIOPA10/S380, SCH7A/PARA68(c)

TIOPA10/S380(2) sets out a default order to be applied in identifying classes of tax-interest that are reactivated. This is the same as the order relating to disallowances in S377, CFM98660

The application of the default rule ensures that there is certainty of the tax position at the level of the UK group company.

The default order

The default order is as follows:

Tax-interest amounts that, if brought into account (under Part 5 CTA 2009), would be non-trading loan relationships debits, fitting the description of relevant loan relationship debits within TIOPA10/S383.

Tax-interest amounts that, if brought into account (under Part 5 CTA 2009), would be non-trading derivative contract debits, fitting the description of relevant derivative contract debits within TIOPA10/S384.

Tax-interest amounts that, if brought into account (under Part 3 CTA 2009), would be trading loan relationships debits, fitting the description of relevant loan relationship debits within TIOPA10/S383.

Tax-interest amounts that, if brought into account (under Part 3 CTA 2009), would be trading derivative contract debits, fitting the description of relevant derivative contract debits within TIOPA10/S384.

Finally, tax-interest amounts that, if brought into account, would represent the financing cost implicit in finance leases, debt factoring or similar arrangements or service concession arrangements accounted for aa a financial liability - the expenses meet condition C in S382.

To put this simply, it is non-trading debits first with loan relationship debits before derivative contract debits, then trading debits again with loan relationship debits before derivative contract debits and finally other amounts included in tax-interest expense.

It should be noted that the category of loan relationship debits is wider than it might appear at first sight because it can include a wide variety of amounts treated by CTA09/PT6 as if they were expenses on loan relationships - CTA09/S477(1). Examples include interest on relevant non-lending relationships CTA09/S479, the funding costs on alternative finance arrangements CTA09/PT6/CH6 and funding costs on repos CTA09/PT6/CH10.

On the other hand, TIOPA10/S384 restricts the types of derivative contract debits that are included in tax-interest. For guidance on what is and is not included in tax-interest see CFM95600 et seq.

Electing out of the default order

The effect of an election under TIOPA10/S380(3) is to disapply the default order and to specify which items of tax-interest the company chooses to bring back into account. The mechanics, as set out below, are the same as for an election under S377, see CFM98660.

The election is not simply an election to set aside the default order in S380; it also identifies the particular tax-interest amounts that brought into account. No specific form is set for the election. As a practical matter, the election needs to be clear and certain in effect. It would in many cases be impractical to identify specified items one by one. It is sufficient to specify to an extent that is adequate to render the company’s tax position unambiguous. It is not necessary to set out detail that can make no difference to the company’s tax position.

The election is made in a company tax return for an accounting period (PARA68(b)) - note that a worldwide group’s period of account may overlap or contain more than one relevant accounting period.

The time limit for making an election (PARA 69(5) to (7)) is the later of:

36 months from the end of the accounting period to which the election relates; and

3 months from the date a relevant interest restriction return was received by an officer of Revenue and Customs.

The company may amend its company tax return within these limits to make an election.

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. As a practical matter, it is anticipated that the making of the election and the amendment of the company tax return will be performed the company as a single process.

An election can be revoked in a company tax return for an accounting period within the same time limits as above, and there is nothing to prevent a new election being made.

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