HM Treasury

HM Revenue & Customs

Tax deductibility of corporate interest expense:

response to the consultation

December 2016

HM Treasury

HM Revenue & Customs

Tax deductibility of corporate interest expense:

response to the consultation

December 2016

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gsi.gov.uk

ISBN 978-1-911375-44-9
PU2013

Contents

Executive summary

Interest is a deductible expense in calculating profits subject to Corporation Tax. However, this creates a risk of groups borrowing excessively in the UK, with the resulting deductions for interest expense eroding the UK tax base. The OECD's report under Action 4 of the Base Erosion and Profit Shifting (BEPS) Project sets out best practice recommendations for countering this. The government announced at Budget 2016 that it would introduce new rules adopting these recommendations to cap the amount of interest expense and other similar financing costs that large businesses can deduct.

The government undertook a consultation on the detailed design and implementation from 12 May to 4 August 2016. There were 176 formal responses to the consultation, which have informed the drafting of the legislation for Finance Bill 2017. The government is grateful to all those who contributed their views during the consultation process.

The new **corporate interest restriction** will be effective from 1 April 2017. All groups will be able to deduct up to £2 million of net interest expense and similar financing costs in the UK per annum. Above this de minimis threshold, the new rules will cap deductions for the net interest expense to the higher of:

- 30% of taxable earnings before interest, taxes, depreciation and amortisation (EBITDA) in the UK (**the Fixed Ratio Rule**); or
- a proportionate share of the worldwide group's net interest expense, equal to UK taxable EBITDA multiplied by the ratio of worldwide net interest expense to worldwide EBITDA (**the Group Ratio Rule**)

The existing Debt Cap will be repealed, but to prevent groups with little third party interest claiming excessive deductions under the Fixed Ratio Rule, a **Modified Debt Cap** will be included in the rules to limit deductions to the net interest expense of the worldwide group.

To protect investment in infrastructure that has a public benefit, a **Public Benefit Infrastructure Exemption** will be introduced. Banking and insurance groups will be subject to the general interest rules.

Draft legislation for the core rules can be found alongside this response to the consultation. Further draft legislation will be published in due course.

The remainder of this document summarises the comments made by respondents in respect of each question. The detailed design of the rules takes into consideration the range of the comments received and wider government policy objectives. The government response under each question provides more information about the policy design and should be read in conjunction with the proposals in the consultation document.

1 Overall comments

1.1 In general, respondents were concerned about the impacts of the new interest restriction rules on the UK's competitiveness. Many suggested that the government should delay the introduction of the rules, particularly in light of the UK's decision to exit the European Union.

Government response

1.2 The government recognises that this measure represents significant structural change to the Corporation Tax system. However, the government has undertaken an extensive period of consultation to ensure that the rules are proportionate, and maintains the importance of implementing the rules from 1 April 2017 to ensure the UK tax base is protected from erosion. The new rules will be in line with the OECD's recommended best practice approach, and many countries such as Australia, Germany, Italy, Japan and Spain already have rules that provide a structural restriction on tax deductions for interest expense.

2 Fixed Ratio Rule

Definition of group and use of accounting frameworks

Q1: Does the use of International Financial Reporting Standards (IFRS) concepts cause practical difficulties for groups accounting under other accounting frameworks (e.g. UK GAAP or US GAAP)? Could the use of a range of acceptable accounting frameworks to define the group give rise to difficulties in identifying the members of the group? What would be the main consequences of relaxing the definition in this way?

2.1 A significant number of respondents were in favour of allowing other acceptable accounting frameworks to be used, in addition to IFRS. Others pointed out that there could also be difficulties for larger multinationals which prepare US GAAP accounts. A small number expressed a preference for the definition to be aligned only with IFRS as this gave more consistency, although some accepted that this could result in an increased burden.

2.2 A number of technical points were also raised. These included the potential for conflict with 50:50 joint venture arrangements, investments held by insurance companies being fully consolidated, and the treatment of companies in insolvency proceedings.

Government response

2.3 The rules will always determine the members of a worldwide group by reference to IFRS. This is necessary because some jurisdictions do not require the preparation of consolidated accounts, so that identifying a group by reference to consolidated accounts actually prepared could lead to arbitrary outcomes. Determining all groups by reference to a single framework will ensure a consistent application of the rules to all companies. In many respects, the treatment under UK GAAP is now aligned with IFRS.

2.4 Groups will be given the flexibility to allocate disallowances among group companies. There will be rules protecting individual companies, including those subject to insolvency proceedings, from excessive disallowances. The government will also introduce rules to disregard the consolidation of some investments by insurance groups (see question 29).

Periods of account

Q2: Is it reasonable to take the proposed approach to the periods for making interest restriction calculations? What changes or alternatives to that approach, if any, should be adopted?

2.5 Most respondents agreed that the government's proposals were reasonable.

Government response

2.6 As proposed, groups with periods of account that span the commencement date will be required to split the results of that period, so that the new rules have effect for interest and EBITDA accrued on or after 1 April 2017.

Tax-interest

Q3: Do you agree that these are the right amounts to be included with the scope of tax-interest? Are there any other amounts that should be included within the scope of tax-interest, or any amounts which should be excluded? If so, why?

2.7 Some respondents suggested that interest to third parties should be excluded from the rules.

2.8 The following concerns about the definition of tax-interest were raised by several respondents:

- including derivatives adds complexity
- fair value movements should not be included as they are not economically equivalent to interest
- transitional adjustments should be excluded if the relevant tax or accounting change arose prior to the rules

Government response

2.9 In order to effectively protect against BEPS, interest to third parties will not be excluded from the definition of tax-interest. To do so would fundamentally undermine the purpose of these rules.

2.10 Derivatives will not be excluded as this would create distortions between similar arrangements, although only those which represent an interest, currency or debt contract will be included, as proposed. Groups will be provided with the option of making an election to exclude the fair value movements arising on derivatives. This will work in a similar manner to the Disregard Regulations.

2.11 Transitional adjustments from changes in accounting practice or tax rules that occurred prior to the commencement of the rules will be excluded.

Treatment of exchange gains and losses

Q4: Do you agree with the proposed treatment of exchange gains and losses? Do you foresee any unintended consequences from this approach? If so, please explain, and suggest an alternative.

2.12 There was no consensus between respondents on this point. Some respondents wanted all exchange gains and losses excluded (including on interest) because foreign exchange movements are outside the group's control and will lead to volatility. Others wanted to widen the proposed scope to include exchange movements on loan principal to ensure consistency with the inclusion of fair value movements.

Government response

2.13 There will not be any substantial change to the treatment of exchange gains and losses set out previously.

Treatment of impairment losses

Q5: Do you agree with the proposed treatment of impairment losses? Do you foresee any unintended consequences from this approach? If so, please explain, and suggest an alternative.

2.14 The majority of respondents said impairment losses should be excluded. In particular, it was considered that these are unlikely to give rise to BEPS risks, as any impairment cost must be realised through a relationship with a third party, they are not amounts equivalent to interest, and they are an unavoidable business loss.

Government response

2.15 All impairment losses will be excluded from the scope of the rules, reflecting the comments received.

Treatment of related transactions

Q6: Do you agree with the proposed treatment of related transactions? Do you foresee any unintended consequences from this approach? If so, please explain, and suggest an alternative.

2.16 Some respondents agreed with the proposals on related transactions, but more thought they should be outside the scope of the rules because they do not pose a BEPS risk and are not equivalent to interest.

Government response

2.17 Profits and losses from related transactions (e.g. debt refinancing) will not be excluded from the rules. Such losses are expenses incurred in connection with the raising of finance. The carry forward provisions will allow deductions for one-off costs to be spread over several periods if necessary.

Tax-EBITDA

Q7: Are there any other amounts that should be included with the definition of tax-EBITDA, or any more items which should be excluded? If so, why?

2.18 A number of respondents referred to the need to align the basis of tax-EBITDA with that of group-EBITDA. Fair value movements and unrealised items were mentioned as a particular distorting factor.

2.19 Some considered that certain items should be excluded, for example pension payments, qualifying Gift Aid payments, capitalised interest and pre-trade expenditure.

Government response

2.20 In general it remains the intention that items will be included in tax-EBITDA as they are included in taxable profit.

2.21 Groups will have an option to exclude the fair value movements on derivatives. This will work in a similar manner to the Disregard Regulations.

2.22 For adjustments in group-EBITDA see question 21, for exclusion of the effect of the Patent Box see question 34, and for exclusion of Gift Aid relief see question 36.

Treatment of tax-depreciation and tax-amortisation

Q8: Do you agree with the proposed treatment for tax-depreciation and tax-amortisation?

2.23 Respondents were generally in agreement with the proposed approach. A few respondents noted the potential for mismatches to arise between the calculation of tax-EBITDA and group-EBITDA.

Government response

2.24 As set out in the consultation, the amounts excluded in respect of depreciation will consist of claimed capital allowances (including balancing allowances) less balancing charges. The amounts excluded in respect of amortisation will include certain amounts which are deductible under the rules for intangible fixed assets.

Treatment of loss relief

Q9: Do you agree that the proposed treatment of different types of loss relief will be fair and effective while minimising the need to analyse and trace loss amounts? If not, please suggest an alternative, providing an explanation of why you find it preferable.

2.25 Respondents were generally in agreement with the proposed approach. A number of respondents raised concerns over the difference in treatment of group relief surrendered or claimed from outside of the group (i.e. consortium relief). Some suggested the amount should be added back to increase tax-EBITDA in the surrendering group, while a few thought that the amount should not be deducted from tax-EBITDA in the claimant group.

Government response

2.26 Tax-EBITDA in the surrendering group will not be adjusted for losses surrendered, as this could create Exchequer risk. Group relief claimed from outside the group will be deducted from tax-EBITDA as proposed, to ensure that the taxable profits of the group cannot be reduced without also reducing the capacity to deduct interest.

Treatment of chargeable gains and allowable capital losses

Q10: Do you agree with the proposed treatment of chargeable gains and allowable capital losses? If not, please suggest an alternative, providing an explanation of why you find it preferable.

2.27 No substantial concerns were raised by respondents.

Government response

2.28 As set out in the consultation, net chargeable gains will be included in tax-EBITDA. Allowable losses will only be taken into account at the time they are utilised.

Carry forward rules

Q11: Given the proposed reform of losses, does carrying forward restricted interest to be treated as an interest expense of a later period give companies sufficient flexibility?

Q12: Does the three year limit on the carry forward of spare capacity provide sufficient flexibility for addressing short term fluctuations in levels of tax-interest and tax-EBITDA?

Q13: Are there common circumstances where the proposals will substantially fail to deal with problems around timing differences?

2.29 Several responses suggested that restricted interest should be carried forward as a group attribute to be relieved when capacity arises, or that it should be possible to surrender or transfer restricted interest carried forward across a group. There were also concerns that restricted interest could become trapped in particular companies and never deductible under the proposed rules.

2.30 A large number of respondents considered that the three year limit on the carry forward of capacity was too short, due to long business cycles and potential interest rate fluctuations. A variety of longer time limits were suggested.

2.31 There were a couple of comments suggesting that companies should be allowed to carry forward and use spare capacity from periods before commencement of the rules.

Government response

2.32 Restricted interest will be carried-forward as a company attribute as proposed, but the rules for carry forward and reactivation in later periods will minimise the risk of restricted interest being trapped.

2.33 In response to the feedback received, the limit on the carry forward of capacity will be extended to five years. This reduces the risk that timing differences will lead to a permanent interest restriction, balancing this against the need to prevent excessive accumulations of a potentially valuable tax asset.

Modified Debt Cap

Q14: Does the proposed modification of the Debt Cap rule balance the objectives of maintaining effective Exchequer protection in this area, aligning the mechanics with the interest restriction rules and ensuring that the relevant figures are readily available from the group's consolidated financial statements?

2.34 Whilst most respondents welcomed repealing the current Debt Cap, a number of concerns were raised with the Modified Debt Cap rule and some thought retaining the existing rules would be preferable. Respondents commented that the Modified Debt Cap was unnecessary given the other rules, and that removing it would help reduce the compliance burden. Some respondents noted it could prevent the carry forward rules working as intended in some scenarios.

2.35 The Modified Debt Cap was not seen to be part of the OECD's recommendations. Respondents observed that the Modified Debt Cap would represent a tighter restriction and could damage UK competitiveness. It was also pointed out that a rule based on net interest expense disadvantages groups with little net debt.

2.36 Should a Debt Cap rule be retained, respondents suggested it should retain certain features of the current rules such as the gross basis, the gateway, and exemptions for group treasury companies and financial services groups.

Government response

2.37 In order to effectively protect against BEPS risks identified in the OECD report, in particular the risk that intragroup loans are used to generate interest deductions in excess of actual third party interest expense, the government will introduce the Modified Debt Cap as proposed. This is consistent with the recommendation in the OECD report that countries consider introducing rules to tackle specific BEPS risks not addressed by the Fixed Ratio Rule and Group Ratio Rule.

2.38 The Group Ratio Rule, as discussed in the next chapter, helps to provide relief for groups with third party interest expense above their fixed ratio. The Modified Debt Cap therefore complements this rule, and protects the Exchequer against groups claiming interest expense up to 30% of tax-EBITDA, when they have no or very little external debt.

2.39 Commencement will be aligned with the main rules so that the Modified Debt Cap replaces the current Debt Cap from 1 April 2017.

3 Group Ratio Rule

Cap on the Group Ratio Rule

Q15: Which of these two approaches do you consider to be the most appropriate way to address the risks arising from very high group ratios or negative group-EBITDA, and why? How should the percentage cap be set under the second approach? Are there other approaches which would better address this situation?

3.1 A large majority questioned the need for a separate approach to address risks from very high group ratios or negative group-EBITDA. Some respondents also raised concerns about the impact on capital intensive projects with long lead-in periods.

3.2 Of those that expressed a preference between the two options in the consultation document, most favoured capping the interest limit to a fixed percentage of tax-EBITDA, noting that it is straightforward and addresses volatility. Respondents generally said any percentage cap should be set as high as possible, for example at 100% or higher.

Government response

3.3 The group ratio will be capped at 100% of tax-EBITDA. This approach to protect against the risk of the Group Ratio Rule undermining the new rules is simpler than the alternative, and will allow the rules addressing volatility to work where the Group Ratio Rule is used. It could give rise to a permanent restriction for highly leveraged projects, but relief may be available through the Public Benefit Infrastructure Exemption.

Obtaining financial information – removal of the 'broadly comparable' limb in the current Debt Cap

Q16: Are there specific cases where the removal of the 'broadly comparable' limb contained in the current Debt Cap regime would give rise to particularly difficult outcomes? If so, please suggest how this extension should be modified to allow the calculation of the group ratio.

3.4 No one identified any actual cases where the removal of this limb would cause difficulties. Most of those who did respond were broadly supportive of removing this limb, although some preferred to retain the flexibility in the rules.

Government response

3.5 The rules will not contain this limb as it not necessary.

Total group-interest and adjusted group-interest

Q17: Are there any further items of profit or loss which should be included within the definition of total qualifying group-interest?

Q18: Are there any other amounts that should be included with the definition of adjusted group-interest, or any more items which should be excluded? If so, why?

3.6 The main point raised in many responses was that group-interest should be aligned with the definition of tax-interest, with a number advocating an option to use tax numbers in calculating the group ratio.

3.7 Just under half of those who answered this question made the point that fair value movements should be excluded from group-interest. Other specific points raised included aligning the treatment of capitalised interest with the tax rules and the need for further consideration of the treatment of joint ventures.

3.8 Taking a different perspective, there were a couple of respondents who considered group-interest should represent all the commercial costs of borrowing, and that there was merit in ensuring consistency with other countries.

Government response

3.9 The rules will provide for adjustments in the calculation of group-interest to better align the group accounting profits with the calculation of taxable profits in the UK as follows:

- exclusion of fair value movements on derivatives in line with the Disregard Regulations
- optional adjustment for capitalised interest on development property and other items of trading stock
- optional recognition of amounts from changes in accounting policy

3.10 These adjustments, which will align the calculation of group-interest and group-EBITDA more closely with the UK tax rules, will be made under a single election. Once made, this election will apply for all future periods of account for the group.

3.11 The government will not be introducing an option for a separate 'tax-based Group Ratio Rule', as this would add complexity and other changes to the Group Ratio Rule make this unnecessary.

Qualifying group-interest

Q19: Are there any other amounts that should be included with the definition of qualifying group-interest, or any more items which should be excluded? If so, why?

3.12 There was a mixture of responses. A general point made by a number of respondents was that the treatment of group-interest should be aligned with tax-interest.

3.13 Around a third of those who responded to this question raised concerns around the exclusion of interest on related party debt, noting that it will need to satisfy the arm's length test. Around a fifth considered that interest on compound instruments should not be excluded, noting their commercial use and ordinary tax treatment. A few respondents considered that interest on perpetual debt and results dependent debt should also not be excluded.

3.14 Specific technical points were also raised on ensuring the definitions are clear, that securitisation vehicles are not adversely affected, and that alternative finance is not restricted.

Government response

3.15 Interest on related party loans, perpetual loans and results dependent loans will not be included in the calculation of the Group Ratio Rule, as this would allow equity-like instruments to increase interest deductions. Amounts on some convertible loans and other compound instruments will be included in the calculation of the group ratio.

Definition of related party

Q20: Do you agree that the proposed definition of related party will be effective in preventing equity investors inflating the group ratio by investing using debt instruments? Please identify situations where this definition would prevent the Group Ratio Rule from taking into account

interest payable to lenders that invest for a fixed return and without seeking influence over the borrower?

3.16 The need to exclude interest on related party debt from the Group Ratio Rule and Public Benefit Infrastructure Exemption was questioned. It was highlighted that there could be genuine commercial reasons for related party funding and that, in some circumstances, it does not pose a BEPS risk. Respondents noted that it is common in many structures for investors to fund an investment through both debt and equity and it seemed unfair to exclude deductions for this related party debt where it was permissible under the arm's length principle. Some respondents noted that the rules could encourage groups to seek external leverage.

3.17 Respondents were also concerned that the rules on related parties created significant complexity and uncertainty. Respondents argued that the definition of 'acting together' proposed in paragraphs 6.43 to 6.45 was drawn very widely and contains an element of subjectivity. This could potentially catch many groups and create excessive interest restrictions. Some respondents also thought that paragraph 6.45 went beyond the definition of 'acting together' included in the OECD's final report.

Government response

3.18 Interest on related party loans will not be included in the calculation of the Group Ratio Rule and the Public Benefit Infrastructure Exemption (unless the related party is a public body or, for the Public Benefit Infrastructure Exemption, a qualifying company), as this would allow equity-like instruments to increase interest deductions.

3.19 The proposed definition of related parties will not be narrowed and the 'acting together' test will be included, as its omission would significantly weaken the rules. The government will, however, introduce a targeted exclusion from the general treatment of related party debt where at least 50% of a class of issued debt is not held by related parties. In addition, the rules will contain a further limited exclusion in cases where a person becomes connected as a result of a company entering liquidation and certain other cases where debt is restructured.

Definition of group-EBITDA

Q21: Are there any other amounts that should be included with the definition of group-EBITDA, or any more items which should be excluded? If so, why?

3.20 Around half of those responding to this question made the point that the calculation of the group ratio should be aligned with the tax treatment, so as to prevent tax-to-book differences giving rise to a restriction of interest. Many reiterated a preference for a Group Ratio Rule based on UK tax numbers. A few respondents, though, noted a preference for the Group Ratio Rule to be consistent with other jurisdictions.

3.21 In terms of specific adjustments, around half of those who answered the question noted difficulties around property and other capital assets where the accounting profit can include unrealised profits and losses. A number of other specific areas where there are tax-to-book differences were also cited (including fair value movements on derivatives, exempt dividends, pensions, share-based payments, general provisions, grants, transitional adjustments, foreign exchange, calculation of chargeable gains, pre-2002 goodwill, Gift Aid, and the Patent Box).

3.22 A few respondents asked that more consideration be given to the treatment of joint ventures.

Government response

3.23 In response to the comments received, the rules will provide for adjustments in the calculation of the group-EBITDA to better align the group accounting profits with the calculation of taxable profits as follows:

- exclusion of fair value movements on derivatives (see questions 40-42)
- exclusion of fair value movements on capital assets
- optional recognition of pension costs on a paid basis
- optional recognition of the cost of employee share options on exercise
- optional recognition of amounts from changes in accounting policy
- optional adjustment to the calculation of gains on asset disposal in line with the tax basis

3.24 These adjustments, which will align the calculation of group-interest and group-EBITDA more closely with the UK tax rules, will be made under a single election. Once made, this election will apply for all future periods of account for the group.

3.25 The government will not be introducing an option for a separate 'tax-based Group Ratio Rule', as this would add complexity and other changes to the Group Ratio Rule make this unnecessary.

3.26 The rules will not adjust for the substantial shareholdings exemption or the dividend exemption. These are structural reliefs that give rise to tax-exempt earnings, and including them could give rise to BEPS risks particularly in the context of overseas subsidiaries.

3.27 Where a group receives contributions towards the capital costs for tangible assets, the amounts recognised in the accounts in respect of these contributions will be included as a reduction in group-depreciation.

3.28 No adjustments will be made to group-EBITDA in respect of Gift Aid and the Patent Box, given the approach set out above for the calculation of tax-EBITDA.

3.29 No adjustments will be made to group-EBITDA in respect of general provisions and foreign exchange movements.

4 Public Benefit Infrastructure Exemption

Infrastructure: the Public Benefit Infrastructure Exemption

Q22: Bearing in mind the Fixed Ratio Rule permitting net interest deductions of up to 30% of tax-EBITDA, the Group Ratio Rule, the £2 million de minimis amount, rules permitting the carry forward of restricted interest and excess capacity, and the inclusion in tax-interest of income accounted for as finance income, please describe the key features of situations involving the financing of public benefit infrastructure where a specific exclusion will be necessary to prevent interest restrictions arising in cases where there is no BEPS.

Q23: Are there any situations involving the financing of public benefit infrastructure where interest restrictions could arise in the absence of BEPS despite a Public Benefit Project Exclusion (PBPE) with the above conditions? If so, please provide details and suggest how the proposals could be changed to prevent undue restrictions occurring.

Q24: Are there any situations where interest restrictions would arise connected with public benefit infrastructure despite the provisions outlined in this document, and where those restrictions could have wider economic consequences? If so, please provide details, including an explanation of why the consequences could not be avoided, such as by restructuring existing financing arrangements. Please suggest how the rules could be adapted to avoid those consequences while still providing an effective counteraction to BEPS involving interest.

4.1 Respondents identified a number of cases where the existing funding arrangements would become unviable if the tax treatment of interest expense is subjected to the general interest restriction measure.

4.2 A large number of respondents commented that the proposed conditions had been cast too narrowly and without sufficient clarity, resulting in uncertainty as to which projects qualify. It was suggested that the conditions should be widened to allow more public benefit projects and sectors to be included. Some respondents were concerned in particular that the definition of a public body is too narrow.

4.3 The majority of respondents believed that related party debt, lent on an arm's length basis, should be covered by the exemption as well as third party debt. Respondents noted that not including related party debt would impact returns on some existing projects by between 5% and 10%. This could damage investor confidence, with a potential for lower investment or higher risk premiums for UK projects in the future. Some respondents observed that the exclusion of related party debt from the exemption would create a funding source bias, distorting competition between third party and related party debt providers.

4.4 A number of respondents wanted clarity that where third party debt is issued at one company level for a project and the funds on-lent to another, the second loan should not be classed as related party debt. Respondents also noted that the exemption targeted individual projects only and did not capture groups, programmes or portfolios of projects in which third party funding is raised at a group level to fund a programme or series of individual qualifying projects.

4.5 Many respondents noted that the UK has historically provided a stable tax environment and therefore favoured grandfathering of existing projects for both related party and third party debt. This was suggested as an effective way of managing the unintended consequences for existing projects and providing confidence and certainty for investors.

4.6 A number of respondents thought that the requirement to have 80% of revenues from the provision of public benefit services would cause an issue for projects, and could undermine some of the benefits of private provision of public infrastructure.

4.7 A small number of respondents commented that change in control or refinancing of debt in a project should not cause the 'public benefit infrastructure' status to be lost.

4.8 One respondent raised concerns over how the £2 million de minimis would be applied: where a group had a number of consolidated projects it would only attract a single £2 million de minimis exclusion, whereas a similar set of projects that were not consolidated would each receive a £2 million de minimis.

Government response

4.9 In the light of these comments, the government will introduce an elective Public Benefit Infrastructure Exemption that is wider than that proposed in the consultation. The Public Benefit Infrastructure Exemption recognises that certain loans used to fund public benefit infrastructure present little risk of BEPS but may nevertheless result in interest expenses in excess of the amount deductible under the Fixed and Group Ratio Rules. It is envisaged that the Public Benefit Infrastructure Exemption will operate on the following basis:

> The Public Benefit Infrastructure Exemption will apply on a company-by-company basis. Qualifying companies will be fully excluded from their group's interest restriction calculations, with the exception of any non-qualifying interest expense.
>
> **Qualifying companies** are those which do not generate operating income other than from qualifying activities and which have no financial income, such as interest and distributions, other than from qualifying companies. They may not hold any tangible or intangible fixed assets other than those representing public benefit infrastructure and ancillary fixed assets. Similarly, they may not hold financial assets other than those representing public benefit infrastructure, or loans to or shares in other qualifying companies. Immaterial amounts of non-qualifying income or assets will not prevent a company from qualifying. Qualifying companies must also be within the charge to Corporation Tax on all their activities, must not hold any shares in non-qualifying companies and are required to make an irrevocable election.
>
> **Qualifying activities** are the provision, upgrade or maintenance of public benefit infrastructure and the undertaking of public benefit services or integral services using that infrastructure, provided that the infrastructure is recognised on the balance sheet, either as a fixed or finance asset, of a qualifying company within the same worldwide group. The Public Benefit Infrastructure Exemption is intended to be limited to those groups which invest in long-term infrastructure assets and have high leverage as a result.
>
> **Public benefit services** are services that are (i) procured by a public body or its wholly owned subsidiary or (ii) provided in consequence of specific arrangements made by Parliament, in both cases to ensure universal provision to the relevant part of the general public; (iii) services performed in the interest of national security; and (iv) the provision of rental property to unrelated parties.
>
> **Specific arrangements** include those where Parliament has arranged for the market to provide the services to all those seeking them, or to all such persons that are licensed to use them under provisions made by Parliament. It is expected that this will cover activities such as (i) water, gas and electricity transmission, interconnectors, distribution and supply; (ii) thermal (coal and gas), renewable and nuclear energy generation; (iii)

port and airport operators; and (iv) the rail network. In each case the activity will need to be governed by specific legislation and/or are regulated by bodies established by statute.

Integral services are ancillary services that are customarily provided using the same public benefit infrastructure that is used for the public benefit services. Where such services enable public benefit infrastructure to be provided on an economically viable basis this should not prevent a company being a qualifying company.

Public benefit infrastructure refers to physical objects used to deliver a public benefit service that have, or are part of a structure that has, an expected economic life at inception exceeding 10 years.

Interest expense will only be excluded from the group's interest restriction calculation if it qualifies. Qualifying interest expense must be paid by a qualifying company to lenders which are not related parties and which only have recourse to the income or assets of qualifying companies (including via security over shares in those companies). Interest will also qualify if it is paid to public bodies or other qualifying companies. However, interest will not qualify if paid on loans for which guarantees are provided unless by qualifying companies or public bodies.

The tax-EBITDA and interest income of companies that have elected into the Public Benefit Infrastructure Exemption will, however, always be excluded from the group's interest restriction calculation.

4.10 As a result the Public Benefit Infrastructure Exemption will not exempt interest except on loans that are used in their entirety to fund taxable public benefit infrastructure and which arise from a commercial decision by the owners of the infrastructure to obtain debt finance.

4.11 The government also recognises that in some particular circumstances a restriction on deductions for interest payable to related parties could unfairly impact the returns of investors who entered into agreements in good faith. This could be the case where the additional tax expense was not factored into original funding models and there is no scope to pass on any of this cost. In such cases, the deductibility of interest payable to related parties can be grandfathered to the extent the loan was agreed prior to the publication on 12 May 2016 of detailed proposals for the interest restriction rules. Grandfathering will be limited to cases where 80% of the qualifying company's expected income has been materially fixed for 10 years or more by long-term contracts with, or procured by, public bodies or their wholly owned subsidiaries. The only relaxation of the Public Benefit Infrastructure Exemption conditions is that the interest may be payable to related parties. All the other conditions must still be met, including electing for the Public Benefit Infrastructure Exemption to apply.

5 Interaction with specific regimes

Oil and gas

Q25: Which of the two proposed approaches would be preferable? Please explain what you see as the advantages and disadvantages of each, and address whether the additional complexity of Option Two is justified by the potential risks and distortions in Option One.

5.1 Respondents considered excluding the ring fence activities entirely from the interest restriction calculation to be the less complex of the options proposed. The additional complexity of the alternative (performing an additional calculation by reference to the whole group, including the ring fence activities, and using whichever results in the lower amount of interest capacity) was not seen as necessary due to existing rules that protect activities inside the ring fence and the lack of any incentive to over-allocate interest expense outside of the ring fence, where the tax burden is generally lower.

Government response

5.2 The Ring Fence Corporation Tax rules already provide an appropriate tax regime for activities inside the ring fence. The government will therefore exclude the ring fence activities entirely from the interest restriction calculation. Activities outside the ring fence will be subject to the interest restriction rules in the normal way.

Securitisation companies

Q26: As securitisation structures and transactions are often complex, there may be exceptions to the analysis set out above. Please would you set out any examples of securitisation structures or transactions within the securitisation regime where a net interest expense position might arise so that the application of the interest restriction rules could lead to an unintended restriction on the securitisation company?

5.3 Half of the respondents that answered this question suggested that securitisation companies should be excluded from the interest restriction rules. Respondents cited that regardless of the underlying position this would not result in any loss of tax as, under the regime normal accounting recognition of income and expense do not apply. Respondents also stated that it was important that securitisation companies are not faced with an unexpected tax liability that could result in the company being unable to operate.

5.4 A number of respondents pointed out that securitisation vehicles can securitise assets other than debt, for example rents, royalties and insurance business. These scenarios could result in the vehicle’s income not consisting wholly of interest amounts, so that it incurs a net interest expense.

Government response

5.5 Companies can only come within the permanent securitisation regime where they hold financial assets, so all of their income and expenditure will be interest or interest-like. Specific provision will be made so that all amounts which fall within the permanent securitisation regime are included in tax-interest. A securitisation company is taxed under the permanent regime on its retained profit, so all of this will be treated as an amount of tax-interest. This reduces the administrative burden involved in analysing that retained profit and should prevent any tax restriction applying inadvertently. In addition, the results dependency test will be switched off for the purposes of the Group Ratio Rule for instruments issued by a securitisation company within the permanent regime. This is in line with the tax treatment under that regime which prevents interest payments made by securitisation companies being treated as a distribution.

5.6 The government will introduce a power similar to that contained in section 353A TIOPA 2010 for the current Debt Cap rules. This will allow the government to make regulations to allow groups to treat any tax liability from an interest restriction in a company that is a party to a capital market arrangement as if it were a liability of another group company. This will avoid the possibility of securitisation companies within a group needing to meet an unexpected tax liability that could adversely affect their capital market arrangement.

Funds, including Authorised Investment Funds (AIFs), Tax Elected Funds (TEFs) and Investment Trust Companies

Q27: Are there any further issues relating to AIFs (including TEFs) or Investment Trust Companies that need to be considered for the purposes of this consultation?

Q28: Are there any other fund structures, not considered in this consultation document, that require special consideration?

5.7 Respondents welcomed clarification that interest distributions were outside the scope of the proposals. One response gave an example of an investment trust that would be impacted by the rules, and noted that others may be affected, particularly if interest rates rise.

Government response

5.8 There will not be any further specific rules for AIFs or investment trusts.

Collective investment vehicles

Q29: As a result of the proposed exclusion from the group of subsidiaries held at fair value, views are invited as to whether a specific carve-out is required for collective investment vehicles from being the ultimate parent company of a group.

5.9 Whilst one respondent did not think specific rules are needed to effect a carve-out, four others did. One other respondent queried whether such a carve-out should be optional, so that collective investment vehicles could be treated as the head of a group for the Group Ratio Rule purposes where that was beneficial. Another thought investment trusts should be able to be treated as the ultimate parent of a group.

Government response

5.10 There will not be a rule that specifies collective investment vehicles cannot head a group. This would be unnecessary and could introduce risks.

5.11 A related risk arises from the consolidation in the accounts of insurance groups of certain investments (in other groups) held to meet their insurance liabilities. Interest income of the insurance groups could be offset against the interest expense of the invested-in groups so that the rules are ineffective for those groups. To prevent this the rules will treat the insurance group and the invested-in group as separate worldwide groups.

Real Estate Investment Trusts (REITs)

Q30: How could the rules be adapted so that they protect the property rental and residual profits of REITS from excessive interest deductions just as they do for other property rental groups?

5.12 Several respondents suggested exempting REITs entirely. Justifications for this included there being a low BEPS risk from REITs and the existing interest-cover rule for REITs. There were also several responses stating that the Property Income Dividend must be protected from the impact of the rules. There were some suggestions that REITs should have the option to apply any interest restriction to either their exempt property investment business or their residual business.

Government response

5.13 REITs will have the flexibility to apply the interest restriction to either the exempt or residual business. So while REITs will be subject to the interest restriction rules, they will not be forced to pay excessive Property Income Dividends.

Property Approved Investment Funds (PAIFs)

Q31: To what extent are PAIFs likely to be impacted by the proposals in their current form? If applicable, how could the rules be adapted so that they protect the property rental profits of PAIFs from excessive interest deductions just as they do for other property rental groups?

5.14 Respondents generally wanted PAIFs to be excluded from the interest restriction rules.

Government response

5.15 The standard rules will apply to PAIFs in the calculation of their tax exempt business, interest and other income up to the limit of total income available for distribution. This will offer some additional protection against excessive interest reducing income taxed as property income, without causing a breach of the PAIF conditions.

Corporate non-resident landlords

Paragraph 8.25: The government is considering whether and how the interest restriction rules should apply to companies with a liability to UK income tax. It would welcome views on this issue.

5.16 Some respondents raised concerns about the complexity of extending the rules to non-resident landlords and the potential impact on investment in property.

Government response

5.17 The government announced at Autumn Statement 2016 that it is considering bringing all non-resident companies receiving taxable income from the UK into the Corporation Tax regime. At Budget 2017, the government will consult on the case and options for implementing this change. The government wants to deliver equal tax treatment to ensure that all companies are subject to the rules which apply generally for the purposes of Corporation Tax, including the limitation of corporate interest expense deductibility.

Banking and insurance groups

Q32: Please supply any evidence that would help the government understand the full extent of interest-related BEPS risks connected with banking and insurance activities, and suggest any modifications that could be made to the Fixed Ratio Rule and the Group Ratio Rule to ensure that they operate effectively, but without giving rise to unwarranted restrictions, in respect of groups performing these activities.

Q33: How could a targeted rule be designed to ensure that net financing costs deducted in the UK are commensurate with the UK business?

General rule

5.18 Some respondents questioned the assumption that banking groups are net interest recipients. It was noted that groups could have net interest expense in broker dealers and leasing companies, as well as in retail banking businesses during periods of loss.

5.19 In this context respondents raised concerns about the definition of interest, in particular the inclusion of fair value movements and impairments on third-party loans.

5.20 A number of respondents said any worldwide Debt Cap provisions should not apply to banking and insurance groups, in line with the existing approach.

Special rules

5.21 Most of the respondents that answered this question suggested that banking and insurance groups should be excluded from the rules.

5.22 Respondents cited the restrictions placed on groups by regulatory requirements, in terms of the amount of permissible borrowing, where borrowing takes place and how borrowed funds are then allocated around a group.

5.23 Respondents also cited the effectiveness of existing tax rules and the central role interest plays in banking/insurance businesses as the key reasons for taking such an approach. Some respondents said there was limited risk in such groups and so additional rules were not required.

5.24 Respondents raised concerns about a modified Fixed Ratio Rule in which operating banking and insurance companies are excluded from the Fixed Ratio Rule calculation.

5.25 They noted the practical challenges with such a rule, such as defining the companies to be excluded and dealing with net interest expense in non-banking/insurance companies that relates to the funding of excluded companies, such as a UK holding company issuing debt and then capitalising a UK banking subsidiary.

5.26 They also questioned whether the impact of the rule would be proportionate to the risks it was seeking to address, and noted the impact it would have on the UK’s competitiveness as a location for groups to headquarter or locate their regional holding companies.

5.27 For these reasons most respondents urged that the UK consider the approach taken by other countries and the UK's future relationship with the European Union before deciding on the need for bespoke rules for banking and insurance groups.

5.28 Even if it was concluded that special rules were needed, a number of respondents noted that more targeted rules could be appropriate.

Government response

5.29 The government acknowledges the significant constraints that regulation provides to the use of interest for base erosion purposes in banking and insurance groups.

5.30 Following responses and discussions with businesses, the government also acknowledges the challenges in defining and administering a modified Fixed Ratio Rule, as well as the disproportionate impact such a rule could have on UK competitiveness.

5.31 It does not therefore intend to modify the Fixed Ratio Rule for banking and insurance groups.

5.32 Banking and insurance groups will instead be subject to the Fixed Ratio Rule in the same way as other industry groups. A number of changes have been made to the proposed definition of interest (see Questions 3 and 5 above) which will reduce the risk of unintended consequences.

5.33 The government does not think a full exclusion from the rules is justified.

5.34 The government will monitor whether there is a need to amend the rules to deal with the possible risks arising from "mixed" groups that combine non-financial services businesses with a regulated bank or insurer. See question 29 regarding investments made by insurance groups.

Tax incentive reliefs: Patent Box, R&D Tax Relief, R&D Expenditure Credits (RDECs), Land Remediation Relief

Q34: Do you agree with the proposed treatment of Patent Box deductions, R&D Tax Relief, RDECs and Land Remediation Relief? If not, please suggest an alternative and explain why you find it preferable.

5.35 Respondents pointed out that including Patent Box deductions in the tax-EBITDA calculation reduces their benefit. One respondent commented that where companies undertake activities specifically incentivised by UK tax law, such as the Patent Box and R&D Expenditure Credits, they should not be adversely impacted by the new rules.

Government response

5.36 The effect of the Patent Box regime will be disregarded when applying the rules, so that they do not diminish the effect of this tax incentive.

Northern Ireland rate of Corporation Tax

Q35: How should amounts of interest restriction or spare capacity be allocated between activities subject to the Northern Ireland rate of Corporation Tax and other activities?

5.37 Respondents generally expressed a preference for some sort of simple apportionment. Apportionment by reference to tax-EBITDA, profit or revenue were all suggested. There were also suggestions to allow groups freedom to allocate as they wish, or on a just and reasonable basis.

Government response

5.38 The restriction will be allocated in proportion to the amounts of net tax-interest expense to which the main rate and the Northern Ireland rate of Corporation Tax apply.

Charities

Q36: Does this approach adequately address the situation where charities hold subsidiaries to undertake trading activities? If not, how could the rules be adapted to better address this situation?

5.39 Several respondents thought there should be a blanket exclusion for charities and their wholly owned trading subsidiaries. A concern was also raised that deducting qualifying Gift Aid donations in calculating tax-EBITDA would prejudice companies who use this relief and have a net interest expense.

Government response

5.40 Interest payments made to a charity will be excluded from tax-interest where that charity is the company's parent and any donations to that charity, if made, would qualify for Gift Aid. This is in line with the option outlined in paragraph 8.55 of the consultation document.

5.41 In addition, any Gift Aid relief claimed by the company will be disregarded in the calculation of tax-EBITDA. This reflects the fact that Gift Aid payments are donations made out of a company's profits rather than a business expense, and will ensure that the rules do not diminish the effect of this relief or act as a disincentive to make such payments.

Registered Societies

Q37: Does this approach adequately address the situation of interest distributions made by Registered Societies? If not, how could the rules be adapted to better address this situation?

5.42 Respondents welcomed clarification that interest distributions made by Registered Societies were outside the scope of the rules.

Government response

5.43 As set out in the consultation document, interest distributions made by Registered Societies will be outside the scope of the rules. Although existing provisions deem such amounts to be interest, they do not represent actual amounts of interest or amounts economically equivalent to interest. They therefore do not fall into the core definition of amounts we are looking to include under the rules. There will be similar exemptions for interest distributions made by certain collective investment vehicles and investment trust companies.

Controlled Foreign Companies (CFCs)

Q38: Do you agree with the proposed treatment of CFCs? If not, please explain the reasons and suggest an alternative approach?

5.44 Around one third of respondents who addressed this point supported the government's proposals. The others generally suggested that CFC interest income or any CFC apportionment should be included in the interest restriction calculations.

Government response

5.45 The rules will not allow interest chargeable under the CFC rules to be included in the calculations, as the CFC rules are anti-avoidance provisions designed to prevent diversion of UK profits.

5.46 We received a question on the matched income rules in the CFC regime, which make use of definitions in the current Debt Cap rules. The government will update these rules to maintain their effect by reference to the new rules.

6 Particular topics

Treatment of income subject to double taxation relief

Q39: Do you agree that the proposed treatment of income subject to double taxation relief will be fair and effective? If not, please suggest an alternative, providing an explanation of why you find it preferable.

6.1 A few respondents raised concerns that the rules would reduce the benefit of double taxation relief when undertaking business internationally and the income is taxed overseas.

Government response

6.2 Income will not be included in tax-interest and tax-EBITDA to the extent that it is effectively sheltered by double taxation relief, as this would introduce distortions and create significant Exchequer risks. However, the rules will not require the effect of the interest restriction to be disregarded when calculating the maximum amount of double taxation relief available.

Proposed treatment of derivative contracts

Q40: Do you agree with the proposed treatment of derivative contracts for calculating tax-interest? Do you foresee any unintended consequences with this approach? If so, please explain, and suggest an alternative.

Q41: Do you agree with the proposed treatment of derivative contracts for calculating tax-EBITDA? Do you foresee any unintended consequences from this approach? If so, please explain, and suggest an alternative.

Q42: Do you agree with the proposed treatment of fair value movements on hedging relationships? Would this cause particular difficulties for groups, that would warrant particular rules to replace the fair value movements on hedging relationships with amounts recognised on an appropriate accruals basis (for example, in line with regulations 7, 8 and 9 of the Disregard Regulations SI 2004/3256)?

6.3 Some respondents were generally supportive of the proposed approach to derivative contracts in calculating tax-interest. However, there were more respondents who considered the rules went too far: Some thought that the rules should only include derivatives which are intended to hedge financing activities; some thought fair value movements on derivatives should always be excluded; and some thought all profits and losses from derivatives should be excluded.

6.4 Those who responded were evenly split between those who were generally supportive of the proposed approach to derivative contracts in calculating tax-EBITDA, and those who thought fair value movements on derivatives should be excluded from tax-EBITDA.

6.5 Other specific points raised included the need to consider the interaction with spreading under the Change of Accounting Practice Regulations (SI 2004 / 3271), and the treatment of derivatives held by a bank on trading account.

6.6 Many of those who responded considered that the fair value movements on derivatives should be excluded from the calculation of the Group Ratio Rule (for example, in a similar way to the Disregard Regulations or the REIT rules), or that the Group Ratio Rule should be aligned with the UK tax treatment.

Government response

6.7 Groups will have the option to exclude the fair value movements on derivatives from the scope of the rules (in a similar way to the application of the Disregard Regulations).

6.8 Fair value movements on derivatives will be excluded from the calculation of the group ratio (again, in a similar way to the application of the Disregard Regulations).

6.9 The rules will not exclude all profits and losses from derivatives as this would create distortions between similar groups using different types of financial instrument.

6.10 Where derivatives are held by a bank on trading account, movements will be included within tax-EBITDA.

Leasing

Q43: Does this approach adequately address the position for both the lessor and lessee across the range of different leasing arrangements? If not, how could the rules be adapted to better address these situations?

6.11 Responses largely related to discrepancies in treatment between operating and finance leases, which one respondent commented as giving an "unlevel playing field". Others thought that the rules should not apply to operating leases (particularly over property) and sought clarification as to how the rules will apply following the introduction of IFRS 16.

Government response

6.12 There will not be any changes at this time to the treatment of leases previously proposed, but the government will keep this under review as part of engaging on treatment of lease payments more generally in advance of the introduction of IFRS 16.

Investment in non-group entities: portfolio investments, associates and joint ventures, subsidiaries measured at fair value

Q44: Does this approach adequately address the position for investments in non-group entities? If not, how could the rules be adapted to better address these situations?

6.13 About half of respondents who addressed this point welcomed the proposal that the groups would have the option of including the joint venture's qualifying group interest in the group's total group-interest. However, there were concerns raised by respondents from the property sector that loans from the investors to the joint venture would be classified as related party interest and as such not included as qualifying group interest for the joint venture. They considered the risk of BEPS in such arrangements to be low, especially when groups had borrowed from third parties for the projects held in the joint venture and pushed this down to the joint venture level. Furthermore, interest could be excluded as a deduction but the receipt would still be taxable. In consequence, transparent joint ventures could have more favourable treatment than opaque joint ventures.

6.14 Concerns were also expressed about unintended restrictions resulting from the calculation of the Group Ratio Rule for investors in transparent partnerships in instances where the partnership is fully consolidated in the investor's group accounts.

Government response

6.15 To address concerns that joint ventures would suffer restrictions unfairly when third party debt is issued by an investor and the funds on-lent to the joint venture, an election will be available for the joint venture to use a 'blended group ratio' based on the weighted average group ratios of its corporate investors.

6.16 Responding to concerns about unfair restrictions on groups investing in partnerships that are fully consolidated in the investor's accounts, such investors will be able to elect to treat the partnership as if it was accounted for under equity accounting for the purposes of calculating the group ratio.

Public bodies

Q45: Does this approach adequately address the situation where public bodies hold subsidiaries to undertake trading activities? If not, how could the rules be adapted to better address this situation?

6.17 Respondents were generally in agreement with the proposals for public bodies. A few technical points were made, for example noting that the rules should cover public bodies formed by statute, public bodies undertaking regulated activities and ensuring that future changes to public bodies (e.g. privatisation) do not disrupt the expected operation of the rules.

Government response

6.18 The consultation document proposed that certain loans from public bodies should be excluded from the definition of related party debt. In addition, certain aspects of the Public Benefit Infrastructure Exemption make reference to public bodies.

6.19 Where necessary the exclusions from related party debt and the conditions of the Public Benefit Infrastructure Exemption will extend to certain companies affiliated with public bodies. This will enable infrastructure contracts procured by subsidiaries of public bodies to fall within qualifying activities.

6.20 The consultation document also proposed that public bodies cannot be the ultimate parent company of a group. To ensure that this does not inadvertently exclude parent companies within the charge to Corporation Tax, this prohibition will be more limited, similar to the Debt Cap rules at section 340 TIOPA 2010.

Phasing in of the rules

Q46: Does the phasing in of the rules as outlined above create any particular difficulties for businesses?

6.21 Most comments included concerns about the complexity of the commencement rules for groups who do not prepare accounts to 31 March. Some said that the rules should only apply to new periods starting after the commencement date, so avoiding the need for any split periods. There was general support for aligning the commencement of all the rules including the Modified Debt Cap, although a small number did not anticipate any difficulties with the proposed phasing-in of the new rules.

Government response

6.22 To provide protection against BEPS and equal treatment irrespective of accounting date, the rules will take effect on 1 April 2017 for all groups. In response to comments made, the government will align the commencement of the Modified Debt Cap rule with the main rules to reduce complexity.

7 Draft legislation

7.1 The government invites comments on the draft legislation as part of Stage 3 of the tax policy development process, which is concerned with drafting legislation to effect the proposed change.

7.2 The following elements are included in the draft legislation that is published alongside this document on 5 December 2016.

Paragraphs in consultation document	Question numbers	Description
5.6-5.13	Q1	Definition of group
5.14-5.17	Q2	Calculation with reference to periods of account for ultimate parent, overlapping accounting periods, joiners, leavers
5.18-5.24	Q3	Tax-interest (except for fair value movements and sector specific exclusions)
5.25-5.27	Q4	Exchange gains and losses
5.28	Q5	Impairment losses
5.29-5.30	Q6	Related transactions
5.31-5.33	Q7	Tax-EBITDA (except Gift Aid relief and incentives)
5.34-5.35	Q8	Tax-depreciation & tax-amortisation
5.36-5.40	Q9	Tax losses brought forward and carried back, group relief (including consortium relief)
5.41-5.42	Q10	Chargeable gains and allowable losses
5.43-5.51	Q11-Q13	Carry forward of restricted interest and spare capacity
5.52-5.54	-	De minimis allowance
5.55-5.58	Q14	Replacement of current Debt Cap regime
6.1-6.9	Q15	Group Ratio Rule (basic rule and 100% tax-EBITDA cap)
6.14-6.21	Q17	Total group-interest
6.22-6.28	Q18	Adjusted group-interest (except fair value movements and optional exclusions for capitalised interest and change of accounting policy)
8.51-8.55	Q36	Charities (for tax-interest)
9.1-9.7	Q39	Double taxation relief

9.8-9.16	Q40-Q41	Derivatives in tax-interest and tax-EBITDA (except fair value movements)
9.28	-	Change of accounting policy for tax-interest
9.37-9.40	Q45	Public bodies
10.1-10.2	-	Anti-avoidance rules
11.1-11.8	Q46	Commencement
11.9	-	Transitional rules

7.3 The following elements will be included in a subsequent draft of the legislation, which will be published before the end of January 2017.

Paragraphs in consultation document	**Question numbers**	**Description**
6.22-6.28	Q18	Fair value movements and optional exclusions for capitalised interest and change of accounting policy in adjusted group-interest
6.29-6.39	Q19	Qualifying group-interest
6.40-6.47	Q20	Related parties and acting together/investing together
6.48-6.62	Q21	Group-EBITDA
7.1-7.9	Q22-Q24	Public Benefit Infrastructure Exemption
8.1-8.3	Q25	Oil and gas
8.4-8.10	Q26	Securitisations
8.11 to 8.17	Q27-Q28	Interest distributions
8.18-8.19	Q29	Groups invested in by insurance groups to be treated as separate groups
8.20-8.22	Q30	Real Estate Investment Trusts (REITs)
8.45-8.48	Q34	Tax incentive reliefs
8.49-8.50	Q35	Northern Ireland rate of Corporation Tax
8.51-8.55	Q36	Gift Aid relief
8.56-8.57	Q37	Registered Societies
9.17-9.20	Q42	Derivatives in group-interest and group-EBITDA, fair value movements of derivative
9.21-9.27	Q43	Leasing
9.28-9.29, 11.9	-	Change of accounting policy for group interest
9.30-9.36	Q44	Associates and joint ventures
-	-	Administrative rules dealing with enquiries, penalties and information powers

A List of respondents

- 100 Group
- Aegon UK
- Affinity Water Ltd
- Almacantar
- American Express
- Angel Trains
- Argent
- Ashurst
- Associated British Ports
- Association for Financial Markets in Europe
- Association of Business Recovery Professionals (R3)
- Association of Chartered Certified Accountants (ACCA)
- Association of Corporate Treasurers (ACT)
- Association of Foreign Banks (AFB)
- Association of Investment Companies (AIC)
- Association of British Insurers (ABI)
- AstraZeneca
- Aviva
- Balfour Beatty
- BBA
- BDO
- Blackrock
- Blue Transmission Investments
- BP
- Bristol Water
- British American Tobacco (BAT)
- British Land
- British Private Equity and Venture Capital Association (BVCA)
- British Property Federation (BPF)
- British Universities Finance Directors Group (BUFDG)
- Canary Wharf Group
- Caterpillar
- Centrica
- Chartered Institute of Taxation (CIOT)
- City of London Law Society – Revenue Committee
- Commercial Real Estate Finance Council (CREFC) Europe
- Community Health Partnerships
- Confederation of British Industry (CBI)
- Co-operative
- Cross London Trains
- Dalmore Capital
- Deloitte
- Derwent London
- DONG Energy
- EDF
- Electra Private Equity
- Electricity Northwest
- Electricity Supply Board
- Enterprise Inns
- Eskmuir

- Eurotunnel
- Evans Property Group
- Eversheds
- Eversholt Rail
- ExxonMobil
- EY
- EY – Banking and Finance Company Working Group on BEPS
- EY – Insurance Company Working Group on BEPS
- EY – PFI/PPP Consortium
- FC Skyfall
- Finance & Leasing Association (FLA)
- Forth Ports
- Freshfields Bruckhaus Deringer
- FTI Consulting
- G4S
- GM Financial
- Goodman
- Grainger
- Grant Thornton
- Great Portland Estates
- Grosvenor
- GSK
- Hammerson
- Heathrow
- Herbert Smith Freehills
- Hermes Investment Management
- Hitachi Europe
- Hogg Robinson
- Horizon Nuclear Power
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Institute of Chartered Accountants of Scotland (ICAS)
- International Underwriting Association of London
- Intu Properties
- Investment Association
- Investment Property Forum (IPF)
- Iona Capital
- Jaguar Land Rover
- Johnston Press
- KPMG
- Land Securities
- Law Debenture Corporation
- Law Society of England and Wales
- Legal & General
- Lehman Brothers
- Liberty Global
- Liquid Capital Markets
- Loan Market Association
- London Gateway Port
- London Society of Chartered Accountants' Taxation Committee
- M&G Investments
- Mark Holland
- Mutual Energy
- National Grid
- National Housing Federation
- Network Rail

- Northern Gas Networks
- Northern Ireland Water
- Oil and Gas UK
- Operis
- Osborne Clarke
- Oxford Properties Group
- PD Ports
- Pension Funds of Canada (Caisse de dépôt et placement du Québec, Ontario Municipal Employees Retirement System, and the Ontario Teachers' Pension Plan Board)
- Phoenix Group
- Pinsent Masons
- PM+M
- Porterbrook
- PPP Forum
- Prudential
- Punch Taverns
- PwC
- Quintain
- Radian
- Rentokil Initial
- Robert Wagener
- Rolls Royce
- Royal Institution of Chartered Surveyors (RICS)
- RSA
- RSM
- RWE AG
- Samuel Ennis
- Scottish Water
- SEGRO
- Severn Trent
- Siemens
- Simmons & Simmons
- Sky
- Sony
- South East Water
- South Hook Gas
- South Staffordshire
- Southern Water
- Spectris
- SPX Flow
- SSE
- SSP
- Standard Life
- Statoil
- Suncor
- Tata Steel
- Thames Water
- The Infrastructure Forum (TIF)
- TheCityUK Tax Group
- Tideway
- Tramlink Nottingham
- Travers Smith
- UK Oil Industry Taxation Committee (UKOITC)
- ULiving@Hertfordshire

- Unite Students
- United Utilities
- University of Witwatersrand
- USS
- Virgin Money
- Viridian
- Water UK
- Watson, Farley & Williams
- Weil, Gotshal & Manges
- Welsh Water

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gsi.gov.uk