

1 Transfer pricing: restriction on claims for compensation adjustments

- (1) Chapter 4 of Part 4 of TIOPA 2010 (transfer pricing: position of disadvantaged person) is amended as follows.
- (2) In section 174 (claim by the affected person who is potentially advantaged), in subsection (3), before the entry for section 175 insert –
“section 174A (claim not allowed in some cases where the disadvantaged person is within the charge to income tax),”.
- (3) After that section insert –

“174A Claims under section 174 where disadvantaged person within charge to income tax

A claim under section 174 may not be made if –

- (a) the disadvantaged person is a person (other than a company) within the charge to income tax in respect of profits arising from the relevant activities, and
 - (b) the advantaged person is a company.”
- (4) After section 187 insert –

“Treatment of interest where claim prevented by section 174A

187A Excess interest treated as a qualifying distribution

- (1) Subsection (2) applies if Conditions A to C in section 187 are met in circumstances where section 174A prevents a claim under section 174.
 - (2) The interest paid under the actual provision, so far as it exceeds ALINT, is treated for the purposes of the Income Tax Acts as a dividend paid by the company which paid the interest (and, accordingly, as a qualifying distribution).”
- (5) The amendments made by this section have effect in relation to any amount arising on or after 25 October 2013, except pre-commencement interest.
 - (6) “Pre-commencement interest” means an amount of interest to the extent that it is, in accordance with generally accepted accounting practice, referable to a period before 25 October 2013.

EXPLANATORY NOTE

TRANSFER PRICING: RESTRICTION ON CLAIMS FOR COMPENSATION ADJUSTMENTS

SUMMARY

1. Clause [X] introduces amendments to the rules in Chapter 4 of Part 4 of Taxation (International and Other Provisions) Act 2010 limiting the circumstances in which a claim for a compensating adjustment by a disadvantaged person may be made. It also clarifies the tax treatment of interest that has been subject to a transfer pricing adjustment.

DETAILS OF THE CLAUSE

2. Subsection (3) of the new clause inserts new section 174A. This section limits the affect of section 174 so that a claim for a compensating adjustment may not be made by a person (the disadvantaged person) that is within the charge to income tax to the extent that the person that is subject to the transfer pricing adjustment (the advantaged person) is a company.

3. Subsection (4) of the clause inserts new section 187A and sets out the tax treatment of interest where new section 174A limits the ability of the disadvantaged person to make a compensating adjustment claim. Where the specified conditions are met, new section 187A treats the non arm's length interest that is subject to the transfer pricing adjustment as a qualifying distribution.

4. Subsections (5) and (6) state that the amendments will affect amounts arising on or after 25 October 2013 but that they will not apply to interest that is, in accordance with generally accepted accounting practice, referable to a period before that date.

BACKGROUND NOTE

5. The intention to introduce this legislation was announced by the Exchequer Secretary to the Treasury in a Written Ministerial Statement on 25 October 2013. This clause and an HMRC technical note were published on the same day. The amendments set take effect from that day.

6. If you have any questions about this change, or comments on the legislation, please contact Graeme Webster on 03000 585820 (email: graeme.webster@hmrc.gsi.gov.uk).