

## Group debt cap

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### Who is likely to be affected?

Large groups of companies that are subject to the debt cap. The debt cap affects approximately 1800 large groups and operates by restricting financing expenses.

### General description of the measure

This measure will amend Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA), the rules commonly called 'the debt cap'. It will resolve an issue that has arisen on the group treasury company election rules whereby elections are being made by companies that do not have a treasury company function.

### Policy objective

The original intention of the group treasury company election was to allow companies that had the treasury function in a group to opt out of the debt cap rules. It was intended to reduce the administrative burdens on these companies. However elections are being made by companies that do not have a treasury function and the amendment is designed to ensure that tax planning is minimised.

### Background to the measure

This measure was announced on 11 December 2012.

In November 2012 there was a short period of informal consultation on the measure.

## Detailed proposal

### Operative date

The measure will have effect for periods of account of worldwide groups commencing on or after 11 December 2012.

### Current law

The debt cap rules are contained within part 7 of TIOPA. These rules restrict the amount of interest that large groups can deduct for the purposes of corporation tax. The group treasury company election is in section 316. It allows companies within a group which meet the criteria within that section to make an election the effect of which is that an electing company's financing expenses and financing income are ignored for the purposes of the group's debt cap computation.

### Proposed revisions

Legislation will be introduced in Finance Bill 2013 to revise the operation of the group treasury company election. It introduces a new criterion that to be a group treasury company a company must have made an election. If, having made an election all or substantially all of a company's activities are treasury activities and all or substantially all of its assets and liabilities relate to such activities, then the company's financing expenses and financing income are included in the election. However, if a company cannot meet substantially the provision then the only financing expenses and financing income included in the election will be those that relate to its treasury activities.

## Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
<b>Economic impact</b>	The measure is not expected to have any significant economic impacts.					
<b>Impact on individuals and households</b>	The measure will not have any impact on individuals and households as it relates to large groups of companies that are subject to the debt cap.					
<b>Equalities impacts</b>	The measure is not expected to have any equalities impact.					
<b>Impact on business including civil society organisations</b>	<p>The measure addresses a tax planning opportunity that allows companies that do not have a treasury function to make a group treasury company election. The measure has limited retrospection in that it will apply to periods of account beginning on or after 11 December 2012. There will be an impact on large groups whose group treasury companies narrowly miss the new criteria for their 2013 accounts.</p> <p>For the controlled foreign company rules this amendment addresses the planning opportunity before their introduction. There should be no impact on the administrative burdens on business as the majority of companies that would make the election can continue to do so.</p> <p>The measure will not have any impact on small or medium businesses or the third sector as it only applies to large groups.</p>					
<b>Operational impact (£m) (HMRC or other)</b>	The measure is not expected to have any operational impact on HM Revenue & Customs.					
<b>Other impacts</b>	Other impacts have been considered and none have been identified.					

## Monitoring and evaluation

The measure cannot be monitored through the CT 600 Company Self Assessment return because the information required here is not included on the form. The pool of potential users will be monitored by reference to group treasury company elections for 2010, 2011 and 2012 periods of account.

## Further advice

If you have any questions about this change, please contact Fiona Hay on 020 7147 2543 (email: [fiona.hay@hmrc.gsi.gov.uk](mailto:fiona.hay@hmrc.gsi.gov.uk)).

**1 Loss relief surrenderable by non-UK resident established in EEA state**

- (1) Section 107 of CTA 2010 (surrender of losses etc) is amended as follows.
- (2) After subsection (1) insert –
  - “(1A) If the surrendering company is established in an EEA state (within the meaning of section 134A), it may surrender a loss or other amount under this Chapter only so far as conditions A and B are met.  
Subsection (6A) imposes restrictions on a surrender under this subsection.”
- (3) In subsection (2) for “The” substitute “In any other case, the”.
- (4) After subsection (6) insert –
  - “(6A) A loss or other amount may not be surrendered by virtue of subsection (1A) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (6B).
  - (6B) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deducted from or otherwise allowed against non-UK profits of any person.”
- (5) In subsection (7), after “subsection (6)” insert “or (6B)”.
- (6) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2013.
- (7) But for this purpose an accounting period beginning before, and ending on or after, 1 April 2013 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.
- (8) An apportionment for the purposes of subsection (7) must be made in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

**EXPLANATORY NOTE**

**LOSS RELIEF SURRENDERABLE BY NON-UK RESIDENT  
ESTABLISHED IN EEA STATE**

**SUMMARY**

1. This clause amends the restrictions on when companies resident in the European Economic Area (EEA) can surrender losses attributable to their UK permanent establishments as group relief from Corporation Tax in the UK. Currently, companies resident in the EEA are subject to the same rules as non-EEA resident companies. From 1 April 2013, a new restriction will apply for EEA resident companies based on whether their losses are relieved in another country in any period, rather than on whether they could potentially be relieved in another country.

**DETAILS OF THE CLAUSE**

2. Subsection (1) is introductory and confirms that section 107 Corporation Tax Act (CTA) 2010, which restricts the losses and other amounts that may be surrendered as group relief by a non-UK resident company, is amended as follows.
3. Subsection (2) provides that where the surrendering company is established in the European Economic Area (EEA) then (as before) it may surrender losses and other amounts that meet Conditions A and B, but they no longer need to meet Condition C. Instead these losses are subject to a new restriction, set out at subsection (4) of this clause.
4. The effect of subsection (3) is that for a non-UK resident company that is not established in the EEA, section 107 CTA remains unchanged.
5. Subsection (4) inserts a new restriction for a company established in the EEA. It may not surrender losses and other amounts that meet conditions A and B if and to the extent that they are deducted from or allowed against non-UK profits of any person.
6. Subsections (6) to (8) provide that this amendment applies to losses arising on or after 1 April 2013. Where an apportionment is needed to work out the losses that arise from this date, companies should use a time apportionment unless that produces an unjust or unreasonable result.

**BACKGROUND**

7. This clause derives from a recent decision of the Court of Justice of the European Union (CJEU) in the case of *Philips Electronics UK Ltd* (C-18/11).
8. If you have any questions about this change, or comments on the legislation, please contact Megan Shaw on 020 7147 0212 (email: [megan.shaw@hmrc.gsi.gov.uk](mailto:megan.shaw@hmrc.gsi.gov.uk)).