

This guidance reflects the legislation as amended by Finance (No.2) Bill 2017-19, which at the time of publication in February 2018 had not received royal assent.

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# **CFM95100 Interest restriction: Overview: Contents**

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# CFM95110 Interest restriction: Overview: Introduction

## What is it?

The Corporate Interest Restriction (TIOPA10/PART10 and SCH7A) was introduced in FA (No.2) 2017.

The aim of the rules is to restrict a group's deductions for interest expense and other financing costs to an amount which is commensurate with its activities taxed in the UK, taking account how much the group borrows from third parties.

Amounts that are disallowed in one accounting period may be carried forward and may potentially be deducted in a subsequent period.

## Who is affected?

The rules apply to all companies within the charge to corporation tax.

However, groups with less than £2 million of net interest expense and other financing costs per annum will not suffer any restriction. Beyond taking reasonable care to establish that this is the case, companies in such groups are not affected by the rules. They have no [reporting requirements](#), though they can appoint a [reporting company](#) and file an [Interest Restriction Return](#) if they wish to.

## When does it apply?

The [rules apply to](#) periods of account starting on or after 1 April 2017.

Periods of account straddling 1 April 2017 are treated as two notional periods. A notional period ending 31 March 2017 is subject to Part 7 of TIOPA 2010, commonly known as the World-Wide Debt Cap (WWDC). Only the notional period commencing 1 April 2017 is subject to the Corporate Interest Restriction.

# CFM95120 Interest restriction: Overview:

## Policy background

Most multi-national groups have external borrowings on which they pay interest and other financing costs. The borrowings will range from multi-billion syndicated loans used to finance a major acquisition or takeover, to overdraft facilities used to help manage the cash flows of individual companies within the group. As well as external borrowings, a multi-national group will very often have borrowing arrangements between group companies.

In line with [Action 4 of the Organisation for Economic Cooperation and Development's work on Base Erosion and Profit Shifting](#), the Corporate Interest Restriction legislation has been designed to combat attempts by multinational enterprises (MNEs) and other companies to obtain excessive tax relief for net interest and similar financing costs. The aim of these new rules is to ensure relief on financing costs is commensurate with the extent to which a business's activities are subject to corporation tax.

# CFM95130 Interest restriction: Overview:

## OECD Action 4

Action 4 of the Organisation for Economic Cooperation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Project addressed "Limiting Base Erosion Involving Interest Deductions and Other Financial Payments". The BEPS project was a major and wide ranging initiative by the OECD and G20 countries to limit tax base erosion and the shifting of profits in such a way that they would bear little or no taxation.

The first output from this initiative was the publication of the report "Addressing Base Erosion and Profit Shifting" in February 2013. This was followed by a 15-point Action Plan, adopted in September 2013. One of those actions concerned hybrid mismatches and the UK brought into effect legislation to address these issues in the Hybrid and Other Mismatches legislation (TIOPA10/PART6A), applicable from 1 January 2017.

The OECD report on Action 4 was published in interim form in 2014 and in final form in October 2015. Further technical work was conducted on specific areas during 2016 and an [updated report](#) was issued in December 2016.

By 2016, the focus of the BEPS project had shifted to implementation. The BEPS package as a whole is designed to be implemented via changes in domestic law and practices, and via treaty provisions. Action 4 requires enactment in domestic law. The report put forward extensive best practice recommendations.

The Executive Summary of the Action 4 Report begins as follows:

"It is an empirical matter of fact that money is mobile and fungible. Thus, multinational groups may achieve favourable tax results by adjusting the amount of debt in a group entity. The influence of tax rules on the location of debt within multinational groups has been established in a number of academic studies and it is well known that groups can easily multiply the level of debt at the level of individual group entities via intragroup financing. Financial instruments can also be used to make payments which are economically equivalent to interest but have a different legal form, therefore escaping restrictions on the deductibility of interest. Base Erosion and Profit Shifting (BEPS) risks in this area may arise in three basic scenarios:

- Groups placing higher levels of third party debt in high tax countries.
- Groups using intragroup loans to generate interest deductions in excess of the group's actual third party interest expense.

- Groups using third party or intragroup financing to fund the generation of tax exempt income."

This clearly sets out the issues covered by the report.

The best-practice recommendations in the report include a number of specific elements, some of which are necessary to implement with the recommended approach and some of which are optional. The key components are:

- a "fixed-ratio" rule that limits deductions for interest and payments economically equivalent to interest to a fixed percentage of earnings before interest, taxes, depreciation and amortisation (EBITDA); and
- an optional group ratio that would allow a higher ratio of financing expense to EBITDA where groups are highly leveraged with third party debt for non-tax reasons.

Certain other features are allowed to reduce the impact of the provisions on entities that pose less BEPS risk. These include the following.

- A de minimis threshold: a level of interest expense below which the provisions would not apply.
- An exclusion for interest paid to third party lenders on loans used to fund public benefit projects, subject to conditions. In these circumstances, although an entity might be highly leveraged, the BEPS risk is considered to be reduced due to the nature of the projects and the close link to the public sector.
- The carry-forward of disallowed interest expense and/or unused [interest capacity](#) (where an entity's actual net interest deductions are below the maximum permitted) for use in future years. This would have a smoothing effect, reducing the impact of earnings and interest rate volatility.

The report also contemplates targeted rules to prevent circumvention of the measure and address specific risks.

As a best practice approach, the report does not prescribe in detail exactly how its recommendations should be implemented as legislation in each jurisdiction. However, it is anticipated that a co-ordinated implementation of the recommended approach would successfully impact on the ability of multinational groups to use debt to achieve base erosion or to shift profit. The implementation, operation and impact of the approach will be monitored over time.

# CFM95140 Interest restriction: Overview: A short guide

The Corporate Interest Restriction is the UK's legislation implementing the Organisation for Economic Cooperation and Development best-practice recommendations for limiting base erosion and profit shifting by means of excessive tax deductions for financing costs.

The aim of the rules is to restrict deductions for a group's net interest and similar financing costs ([tax-interest](#)) to an amount which is commensurate with the activities taxed in the UK, taking account how much the group borrows from third parties.

Beyond the £2m per annum [de minimis](#), deductions will be limited to the group's net third party interest expense, or a part thereof that is proportionate to their UK-taxable EBITDA.

The rules may restrict groups which borrow in the UK from third parties or intra-group to hold or acquire foreign businesses (which do not form part of the UK tax base), and groups which borrow from their shareholders or other related parties, as in typical private equity structures.

The rules apply mechanically. Most of the information needed is already in tax computations, although certain accounting information may also be needed from the group's [financial statements](#). There is no avoidance or purpose condition for the rules to apply. They apply after most other tax rules, such as transfer pricing and anti-hybrid rules, but before the loss restriction rules.

## The essence of how the rules operate

The rules will operate on a [worldwide group](#) basis (based on IFRS consolidation rules) for each period of account of the group's [ultimate parent](#). This will allow groups to manage any restriction across their UK businesses. Groups can nominate one company to file for the whole group. The default [fixed ratio method](#) imposes two main limits on the group's tax-interest deductions.

The first is by reference to a fixed ratio of 30% of the taxable earnings before tax-interest, depreciation and amortisation ([tax-EBITDA](#)) of group companies in the charge to corporation tax. Tax-EBITDA and tax-interest are measured by reference to amounts taken into account in computing corporation tax.

The second is a debt cap, designed to limit the net tax-interest to a measure of the worldwide group's net external interest and economically similar, expense.



As an alternative, the [group ratio method](#) may be applied, under which the net tax-interest deduction is limited by applying the [group ratio](#) to tax-EBITDA. The group ratio is in essence the ratio of [group-interest](#) to [group EBITDA](#), both measures based on a group's consolidated accounts. The group ratio method also incorporates a debt cap, based on the measure of the group's net interest expense that is used as the denominator in the group ratio.

Groups which provide [public infrastructure](#), including rental property, can elect to use a different approach for some or all of their companies. Instead of applying a limit based on a percentage of earnings, the infrastructure rules restrict deductions where the interest is paid to lenders that are related parties or which have recourse to income or assets other than taxable public infrastructure.

Interest above the limit is restricted and carried forward indefinitely. It can be [reactivated](#) if there is sufficient [interest allowance](#) in a subsequent period. Unused interest allowance is carried forward for use in a subsequent period for up to five years.

# CFM95150 Interest restriction: Overview: Structure of the legislation

The rules for the Corporate Interest Restriction are contained within Part 10 of Taxation (International and Other Provisions) Act 2010.

The legislation is structured as follows.

- Chapter 1 introduces the corporate interest restriction.
- Chapter 2 explains the disallowance of [tax-interest](#) and how the [carry-forward](#) of disallowed interest works.
- Chapter 3 defines the [tax-interest expense](#) amount, the tax-interest income amount, the net tax-interest expense and the [aggregate net tax-interest expense](#).
- Chapter 4 contains provision about the calculation of the [interest capacity](#) of a [worldwide group](#) for a [period of account](#).
- Chapter 5 contains provision about the calculation of the [interest allowance](#) of a [worldwide group](#), including the [fixed ratio method](#), the [group ratio method](#).
- Chapter 6 defines [tax-EBITDA](#) and [aggregate tax-EBITDA](#).
- Chapter 7 defines additional concepts used in Chapter 5 including [adjusted net group-interest expense](#), [qualifying net group-interest expense](#) and [group-EBITDA](#).
- Chapter 8 contains [optional alternative rules](#) applying to the provision of public infrastructure assets.
- Chapter 9 contains special provisions in relation to particular types of company, and particular types of transaction or accounting.
- Chapter 10 contains [anti-avoidance rules](#).
- Chapter 11 contains the remaining interpretative and supplementary provision including definitions of [related party](#), the [worldwide group](#), the [ultimate parent](#) and the [period of account](#) of the group.
- Schedule 7A of TIOPA 2010 contains [administrative rules](#), including the appointment of a [reporting company](#), [interest restriction returns](#), [enquiry procedures](#), [information powers](#) and [penalties](#).

In addition F(No.2)A17/SCH10/PART3 contains consequential amendments to other legislation. Transitional and commencement rules are found in F(No.2)A17/SCH10/PART4.

# **CFM95200 Interest restriction: Core rules: Contents**

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# CFM95210 Interest restriction: Core rules: Summary of the Rules - the company and the group

The Corporate Interest Restriction (TIOPA10/PART10) is intended to limit corporation tax deductions for interest expense and similar finance costs ([tax-interest](#)) at the level of the [worldwide group](#). Accordingly, the basic calculations are performed at group level for a [period of account](#) of the group. The composition of a group is primarily based on the approach adopted in International Financial Reporting Standards (IFRS). A single-company group is possible.

Although the legislation applies to groups of companies, and much of the computational process takes place at group level, it is given effect through a reduction or increase in deductions at the company level. The legislation sets out how the group's position and company's tax position are interrelated. These links that bind together how the legislation operates at group and at company level are a pervasive feature of the Corporate Interest Restriction. For example, Chapter 2 of the legislation (TIOPA10/S375-381), which sets out the core mechanics, works at both company and group level.

For instance, group members subject to corporation tax, known as UK group companies, may be subject to a [disallowance](#) of some or all of their [net tax-interest expense](#), or the [reactivation](#) of amounts previously disallowed. This can have effect in any [relevant accounting period](#) that coincides with or overlaps the group's period of account. Similarly, some of the amounts required for the group level calculations, notably [aggregate net tax-interest expense](#) and [aggregate tax-EBITDA](#) are based on figures of net tax-interest expense and [tax-EBITDA](#) that are taken into account in computing profits or losses subject to corporation tax, at the level of the UK group company. Again, it is necessary to look at the amounts for each company's relevant accounting periods, leaving out those amounts which do not relate to the group's period of account or when the company was not part of the group.

In a similar way, the net tax-interest expense amounts previously disallowed and available for reactivation in a later period are attributable to a company and may be available even where it becomes a member of a different group. Conversely, any unused [interest allowance](#) from an earlier period of a group is a group attribute and does not transfer with a company if it becomes a member of a different group.

It is expected that compliance with the rules will usually be managed at the group level by a [reporting company](#). This will normally be appointed by the group, but HMRC can also appoint one in certain cases. The compliance

regime is built around the group's [interest restriction return](#), submitted by the reporting company.

### **The de minimis amount**

Although the rules apply to all companies within the charge to corporation tax, they have no tax effect on groups with less than £2 million of net tax-interest expense per annum (the de minimis amount). Where the period of account is not exactly a year in length the de minimis amount for the period is adjusted pro-rata by day count. Under the interest restriction rules, all groups are able to deduct their current period net tax-interest expense up to the de minimis amount.

To determine whether a group falls within the de minimis amount, it is only necessary to establish its membership, and that its [aggregate net tax-interest expense](#) is less than the de minimis amount (or, indeed, that it has [aggregate net tax-interest income](#)). No reporting requirements would generally apply to companies in such groups. However, if a reporting company is in place for a period of account it will need to file at least an [abbreviated return for that period](#).

### **Appointment of a reporting company**

There is no obligation on a group to appoint a reporting company. If a group is able to satisfy itself that it is not liable to interest restriction, then it may decide there is no benefit from having a reporting company. HMRC also has the right to appoint a reporting company, but does not intend to use this power on a speculative basis or where there is no indication the group might be subject to an interest restriction.

However, if a group wants to calculate and use carried forward unused [interest allowance](#) from a period, it must file a full return for that period and any subsequent period before that in which the allowance is used. In this case, it should appoint a reporting company within the statutory time limits to allow the full return to be filed.

Note that the reporting company is permitted to file an [abbreviated return](#) for a period in which it does not suffer an interest restriction. It can subsequently, within five years of the period of account, submit a revised full return to establish the carried forward amount available in a later period. For further discussion of the possible future benefits of appointing a reporting company and submitting an abbreviated return, even where no interest restriction is due, see [CFM98410](#).

## CFM95220 Interest restriction: Core rules: Interest capacity, allowances and disallowances

A [worldwide group](#) will suffer a [disallowance](#) where its [aggregate net tax-interest expense](#) for the [period of account](#) exceeds its [interest capacity](#) for the period. This excess is known as the total disallowed amount (TIOPA10/S373(2)).

In the simple case, where no amounts are brought forward, the interest capacity will be the greater of the [basic interest allowance](#) for the period of account or the £2 million per annum de minimis amount. Where periods of account are not exactly 12 months long, including on commencement, where a period is treated as starting on 1 April 2017, the de minimis amount for the period is computed pro-rata by day count.

### Aggregate net tax-interest expense

The worldwide group's aggregate net tax-interest expense, as its name suggests, is computed by aggregating amounts of tax-interest of companies in the group. To work out the aggregate net tax-interest expense, it is first necessary to determine the [net tax-interest expense or income](#) of each relevant company in respect of the group's period of account. A relevant company is one that is a member of the group for all or part of a period of account. As the amounts concerned are amounts taken into account for corporation tax (or those that would be but for these rules), only companies subject to corporation tax need be considered.

For each company, these amounts are determined by identifying [tax-interest](#) income and expense amounts in respect of the group's period of account and aggregating those amounts. This will result in either net tax-interest expense where expenses exceed income, or net tax-interest income where income exceed expenses. If a company has [net tax-interest expense](#) its [net tax-interest income](#) amount is zero and vice versa. There are rules dealing with disregarded periods where company accounting periods do not coincide with the group's period of account, or a company joins or leaves a group part way through a period.

To compute the group's aggregate net tax-interest expense the sum of the net tax-interest income amounts for all relevant companies is subtracted from the sum of net tax-interest expense amounts (no company can have both). If the result of this is a negative number, that is the group's aggregate net tax-interest income for the period of account.

Note that although the amount is referred to as the [aggregate tax-interest](#) expense of a worldwide group, only amounts relating to UK group companies are taken into account in the calculation.

### Example

	UK group company A	UK group company B	UK group company C	Group amount
Tax-interest expense amounts	100	60	50	
Tax-interest income amounts	20	100	40	
Net tax-interest expense	80	Nil	10	90
Net tax-interest income	Nil	40	Nil	40
Aggregate net tax-interest expense				50

The aggregate net tax-interest expense of 50 is the same as the sum of all the companies' [tax-interest expense](#) amounts, 210, less the sum of all their tax-interest income amounts, 160. In this calculation, no distinction is made between intra-group and external amounts.

## Interest capacity and interest allowance

The rules use two closely related concepts: interest capacity and interest allowance. The [interest capacity](#), which takes into account the de minimis amount, limits the amount of aggregate net tax-interest expense arising in the current period that can be deducted. The [interest allowance](#) is a function of any aggregate tax-EBITDA and any aggregate net tax-interest income for the period. The interest allowance feeds into the interest capacity, but it is the unused interest allowance that can be carried forward or used to reactivate carried forward tax-interest expense.

The interaction between interest capacity and interest allowance prevents de minimis amounts from being carried forward or being used in place of carried forward interest allowance.



## Interest capacity

The interest capacity, the figure actually taken into account in computing disallowances, is calculated from the basic interest allowance and augmented by any unused interest allowance for earlier years. It is also subject to the de minimis limit, set at £2 million per annum. Where the period of account is longer or shorter than a year, the de minimis amount available for the period is adjusted proportionately.

## Interest allowance

### Basic interest allowance

The processes required to compute the 'basic interest allowance' are more complex than computing the aggregate net tax-interest expense, as more than one test is applied, and there is a choice of two methods; the [fixed ratio method](#) and the [group ratio method](#).

### Interest allowance

The interest allowance for the period is the sum of the basic interest allowance and the aggregate net tax-interest income for the period of account. This aspect of the calculation is only relevant to amounts carried forward, because if there is aggregate net tax-interest income in a period there is no aggregate net tax-interest expense to restrict.

## What happens to disallowances

Normally a group will have appointed a [reporting company](#) which will [allocate any disallowances](#) to UK group companies and then to accounting periods falling at least partly within the group's period of account. The allocated amounts reduce the company's net deduction for tax-interest expense for its accounting period. There is a default order in which different types of tax-interest expense deductions are disallowed, which the company may elect to vary.

If a group has no [reporting company](#) each company's allocation will be a [pro-rata share](#) of the group's total disallowed amount. Pro-rata allocations are proportional to a company's share of group net tax-interest expense. In groups with a reporting company, the pro-rata amount is also the maximum disallowance that can be allocated to a group member that has [opted not to consent](#) to discretionary allocations made by the reporting company.

The amounts disallowed at company level become a tax attribute of the company. Disallowed amounts may be reactivated in subsequent periods of account to the extent the group's interest allowance exceeds its [aggregate](#)

[tax-interest](#) expense for the period. The group can [elect](#) which companies reactivate the amounts they carry forward. Reactivated amounts are treated as current period expenses of the same type as the amounts previously disallowed.

# CFM95230 Interest restriction: Core rules: The fixed ratio method

## TIOPA10/S397

Of the two methods applied in computing the [basic interest allowance](#) of the [worldwide group](#) for a period of account, the simpler method used by default, is the fixed ratio method.

Applying this method, the basic interest allowance is the lower of:

- a fixed percentage (30%) of the worldwide group's [aggregate tax-EBITDA](#); and
- the [fixed ratio debt cap](#) for the period.

## Aggregate tax-EBITDA

The tax-EBITDA of a company is a measure of its earnings before interest, tax, depreciation and amortisation, but computed according to corporation tax rules. The amounts for the UK group companies that were members of the worldwide group at any time in the period of account are aggregated to produce the [aggregate tax-EBITDA](#) of a worldwide group for a period of account. The tax-EBITDA of a company may be negative, but where the sum of these amounts is negative, the group is treated as having tax-EBITDA of zero. As with [aggregate tax-interest](#), there are rules dealing with [disregarded periods](#) where company accounting periods do not coincide with the group's period of account, or a company joins or leaves a group part way through a period.

## The fixed ratio debt cap

The debt cap taken into account under the fixed ratio method is a measure of the entire worldwide group's net external interest expense. It is an accounting-based measure.

The first stage in computing this limit is calculation of the worldwide group's [net group-interest expense](#) from accounting data. This comprises amounts of interest and similar financing expense or income that are included within the profit or loss in the group's [financial statements](#). The specific categories of income and expense which fall within net group-interest expense are set out in the legislation.

The measure of external interest expense used to compute the fixed ratio debt cap is the [adjusted net group-interest expense](#) of the group (ANGIE). This is computed by making specific upwards and downwards adjustments to the net group-interest expense of the group for the period of account. These adjustments align the measure more closely with the type and timing of amounts included in net tax-interest.

The fixed ratio debt cap is the sum of the ANGIE and any [excess debt cap](#) brought forward from the previous period.

## Simple examples

In a simple case where no amounts are brought forward and the de minimis amount is not relevant, the group's interest restriction if any, will be:

- The [aggregate net tax-interest expense](#) for the [worldwide group](#)

less the lower of:

- 30% of the worldwide group's aggregate tax-EBITDA; and
- the fixed ratio debt cap for the period of account.

### Example A

Aggregate net tax interest expense		(A)	25
Aggregate tax-EBITDA		(B)	100
30% of aggregate tax-EBITDA	(B x 30%)	(C)	30
Fixed ratio debt cap (ANGIE)		(D)	150
Basic interest allowance	(lower of C or D)	(E)	30
Restriction	(A - E)		nil
Basic interest allowance not used	(E - A)		5

There is unused allowance of 5 as the worldwide group's basic interest allowance exceeds its aggregate net tax-interest expense by that amount. This amount can be [carried forward](#).

**Example B**

Aggregate net tax-interest expense		(A)	50
Aggregate tax-EBITDA		(B)	100
30% of aggregate tax-EBITDA	(B x 30%)	(C)	30
Fixed ratio debt cap (ANGIE)		(D)	150
Basic interest allowance	(lower C or D)	(E)	30
Restriction	(A - E)		20
Basic interest allowance not used:	(E - A)		nil

# CFM95240 Interest restriction: Core rules: The group ratio method

## TIOPA10/S398

The second method for computing the [basic interest allowance](#) of the [worldwide group](#) for a period of account is the group ratio method. This method is applied where the [reporting company](#) makes a group ratio election (TIOPA10/SCH7A/PARA13). This election may be revoked.

Applying this method, the basic interest allowance is the lower of:

- the [group ratio percentage](#) of the aggregate tax-EBITDA; and
- the [group ratio debt cap](#) for the period.

### Group ratio percentage

The group ratio percentage is computed by dividing the group's [qualifying net group-interest expense \(QNGIE\)](#) for a period of account by its [group-EBITDA](#) for the period. The group ratio percentage is capped at 100% and is also set to 100% if this calculation gives a negative result or if group-EBITDA is zero (s399).

### Qualifying net group-interest expense (QNGIE)

The same measure of net external interest expense, [QNGIE](#), is used as the denominator in calculating the group ratio percentage and as the basis for the group ratio debt cap.

QNGIE is based on the [ANGIE](#), but excludes some expense amounts that are taken into account in computing the ANGIE. These include amounts arising on financial liabilities owed to related parties, amounts arising on results dependent securities, and amounts arising on perpetual and very long-dated instruments.

### Group-EBITDA

[Group-EBITDA](#) is based on an accounting measure of the group's profit before tax, increased by its net group-interest expense with adjustments for depreciation and amortisation. In these calculations, a loss is treated as negative profit, and income as negative expense.

Elections may be made to use alternative methods for the calculations, which may then better align tax and accounting measures.

## The group ratio debt cap

The group ratio debt cap works in a similar way to the [fixed ratio debt cap](#). It is the sum of QNGIE and any [excess debt cap](#) brought forward from the previous period. The same amount of excess debt cap brought forward is used for the group ratio debt cap as for the fixed ratio debt cap.

The group ratio debt cap can be smaller, but never larger than the fixed ratio debt cap as some expense amounts included in the ANGIE are excluded from QNGIE.

## Simple examples

If no amounts are brought forward from earlier periods, and the de minimis amount is not relevant, under the group ratio method the interest restriction becomes:

- The [aggregate net tax-interest expense](#) for the worldwide group

less the lower of:

- the group ratio percentage of the worldwide group's aggregate [tax-EBITDA](#); and
- the group ratio debt cap for the period of account.

### Example C

Aggregate net tax interest expense		(A)	50
Aggregate tax-EBITDA		(B)	100
<b>Fixed ratio method</b>			
30% of aggregate tax-EBITDA	(30% of B)	(C)	30
Fixed ratio debt cap = ANGIE		(D)	90
Basic interest allowance	(lower of C or D)	(E)	30
Fixed ratio method restriction	(A - E)	(F)	20

<b>Group ratio method</b>			
Group-EBITDA		(G)	200
Group ratio debt cap = QNGIE		(H)	90
Group ratio percentage	(H/G)	(I)	45%
Group ratio percentage of aggregate tax-EBITDA	(I x B)	(J)	45
Basic interest allowance	(lower of H or J)	(K)	45
Group ratio method restriction	(A - K)		5

In Example C, electing for the group ratio method reduces the disallowance significantly.

#### Example D

Aggregate net tax interest expense		(A)	50
Aggregate tax-EBITDA		(B)	100
<b>Fixed ratio method</b>			
30% of aggregate tax-EBITDA	(30% of B)	(C)	30
Fixed ratio debt cap = ANGIE		(D)	90
Basic interest allowance	(lower of C or D)	(E)	30
Fixed ratio method restriction	(A - E)	(F)	20
<b>Group ratio method</b>			
Group-EBITDA		(G)	200
Group ratio debt cap = QNGIE		(H)	56
Group ratio percentage	(H/G)	(I)	28%
Group ratio percentage of aggregate tax-EBITDA	(I x B)	(J)	28



Basic interest allowance	(lower of H or J)	(K)	28
Group ratio method restriction	(A - K)		22

Example D differs from Example C in that QNGIE is much lower than ANGIE, perhaps because much of the group's external interest expense is payable to related parties. As a result the group ratio method is not beneficial.

### Example E

Aggregate net tax interest expense		(A)	90
Aggregate tax-EBITDA		(B)	100
<b>Fixed ratio method</b>			
30% of aggregate tax-EBITDA	(30% of B)	(C)	30
Fixed ratio debt cap = ANGIE		(D)	90
Basic interest allowance	(lower of C or D)	(E)	30
Fixed ratio method restriction	(A - E)	(F)	60
<b>Group ratio method</b>			
Group-EBITDA		(G)	90
Group ratio debt cap = QNGIE		(H)	81
Group ratio percentage	(H/G)	(I)	90%
Group ratio percentage of aggregate tax-EBITDA	(I x B)	(J)	90
Basic interest allowance	(lower of H or J)	(K)	81
Group ratio method restriction	(A - K)		9

Example E shows deductions for tax-interest limited to QNGIE, the group ratio debt cap. The application of the group ratio method still significantly reduces the disallowance as compared to the fixed ratio method.

## Example F

Aggregate net tax interest expense		(A)	120
Aggregate tax-EBITDA		(B)	100
<b>Fixed ratio method</b>			
30% of aggregate tax-EBITDA	(30% of B)	(C)	30
Fixed ratio debt cap = ANGIE		(D)	120
Basic interest allowance	(lower of C or D)	(E)	30
Fixed ratio method restriction	(A - E)	(F)	90
<b>Group ratio method</b>			
Group-EBITDA		(G)	60
Group ratio debt cap = QNGIE		(H)	120
Group ratio percentage	(H/G, capped)	(I)	100%
Group ratio percentage of aggregate tax-EBITDA	(I x B)	(J)	100
Basic interest allowance	(lower of H or J)	(K)	100
Group ratio method restriction	(A - K)		20

In example F, all the group's external interest expense of 120 is borne by UK companies. There are operating losses outside the UK. Consequently, group-EBITDA, a worldwide measure, is substantially lower than tax-EBITDA, a UK measure. Further, the group is in a global net loss position, as its interest expense exceeds group EBITDA. In this example, the group ratio percentage is capped at 100% by s399. This means that the net deduction for tax-interest cannot exceed tax-EBITDA. Even so, the application of the group ratio method significantly reduces the disallowance as compared to the fixed ratio method.

# CFM95250 Interest restriction: Core rules: Carry forward and reactivations

**TIOPA10/S373**

**TIOPA10/S378-S381**

**TIOPA10/S392-S396**

**TIOPA10/S400**

The purpose of the carry forward provisions within the Corporate Interest Restriction is to reduce the risk that additional interest restrictions are imposed due to variations over the business cycle, other sources of volatility, and the fact that the rules are applied separately to each period of account.

Volatility in a group's profitability, or in the prevailing levels of interest rates, could result in large [disallowances](#) in one period but none in others, leading to different outcomes depending on when profits are earned. Allowing the carry forward of disallowed amounts for later reactivation, and of unutilised [interest allowance](#), to reduce or prevent future disallowances, achieves smoothing over a period of time.

Net tax-interest disallowances are applied at company level, and the history of disallowances and reactivations creates an attribute, carried forward indefinitely at company level. The attribute is capable of being accessed even if the company becomes a member of a different group.

Brought forward unused interest allowance is a group attribute and can only be used to reduce disallowances by members of the group. It expires after five years.

## **Carry forward of disallowed amounts and reactivations**

A company that has been subject to interest restriction will have a history of disallowances, and possibly reactivations, leaving it with a balance of past disallowances less reactivations at the end of each accounting period. This is its amount available for reactivation (s378).

Where a [worldwide group](#) has unused interest allowance for a period of account this must be applied to reactivate amounts at company level. This is

not discretionary. Subject to limits set by other rules, the group must reactivate the maximum possible amount in any period of account (s379).

The rules about reactivations are somewhat intricate, because reactivations are at company level and accounting period by accounting period, whereas the interest allowance available is a group attribute, by period of account.

Interest reactivations are only possible where there is a [reporting company](#) in place. Interest reactivations are allocated, subject to the applicable rules, at the discretion of the reporting company (Sch7A/paras 25-26).

The amount available for reactivation is a company attribute. It is therefore a possibility that there could be reactivation and disallowance in the same accounting period of the company in two circumstances. The first is where its accounting period straddles two period of account, in one of which there are allocated disallowances and the other allocated reactivations. The same effect may arise if the company changes groups during an accounting period. If there is both reactivation and disallowance in the same accounting period, these amounts are offset at company level (s381).

## **Carry forward of interest allowance**

The calculation of a group's [interest capacity](#) for a period of account works on a cumulative basis (s392). It is the sum of the [interest allowance](#) for the period, plus the interest allowance for earlier periods of account that are still available (s393).

The amounts that are brought forward are group attributes; a company joining a group cannot bring with it any interest allowance from a time during which it was a member of a different group.

A group is [identified](#) by its [ultimate parent](#). Where there is a change in the ultimate parent, there is a different group and any interest allowance from the previous group cannot be carried forward for future periods.

## **Time-expiry of interest allowance**

Unused interest allowance does not carry forward indefinitely but time expires after five years. The rules determine how much allowance from an originating period is left unexpired in a receiving period, applying time apportionment of originating and/or receiving period where the five year limit is straddled (s395). Unused allowance for an earlier period will always be used before that of a later period (s394(4)).

## Enhancement of tax capacity with net tax-interest income

If a group has [aggregate net tax-interest income](#) for a period of account, that is added to its [basic interest allowance](#) for the period to augment its interest allowance for the year and, as a result, the amount potentially available for carry-forward (s396).

Where a group has aggregate net tax-interest income for a period it is possible that the group will contain companies with brought forward disallowances. The capacity for the year (which will include its net tax-interest income) must first be applied to reactivate such carried-forward disallowed tax-interest amounts (s379).

The combination of the possibility of applying the net tax-interest income of a period to either increase the reactivation of disallowed amounts from earlier years or augment allowance carried forward to later years provides an indirect mechanism for offsetting net tax-interest income of a period against net tax-interest expense of an earlier or later year.

## Carry forward of excess debt cap

Excess debt cap can arise where there is an interest disallowance in a period and the debt cap is not the limiting factor in computing a group's [basic interest allowance](#) for a period (s400). Excess debt cap can arise if either the [fixed ratio method](#) or the [group ratio method](#) is applied.

Where the fixed ratio method applies, excess debt cap for a period of account is the [fixed ratio debt cap](#) based on the group's [adjusted net group-interest expense](#) (ANGIE) less 30% of [aggregate tax-EBITDA](#).

Where the group ratio method applies, excess debt cap for a period of account is the [group ratio debt cap](#) based on the group's [qualifying net group-interest expense](#) (QNGIE), less the [group ratio percentage](#) of aggregate tax-EBITDA.

There is a limit on the amount of excess debt cap that can be carried forward; the [carried forward limit](#). This is the sum of any excess debt cap from the period immediately before the period of account plus the total disallowed amount for that period.

The excess debt cap carry-forward is likely to be of practical significance for a group where in most periods the debt cap is the factor limiting interest capacity, but in a particular period of account the aggregate tax-EBITDA figure is unusually low. The aggregate tax-EBITDA multiplied by the fixed ratio

or group ratio, as applicable, becomes the limiting factor on interest capacity in that period, rather than the debt cap. In the next period of account, the brought forward excess debt cap increases the debt cap for the year. Therefore, if the level of tax-EBITDA is no longer the limiting factor, the group's interest allowance is increased by the excess debt cap brought forward.

The excess debt cap is available in the next period even if the group switches from applying the fixed ratio method to the group ratio method, or vice versa; there is no need to recalculate the figure on a different basis when this happens.

# CFM95260 Interest restriction: Core rules: Special rules

There are adaptations of the core Corporate Interest Restriction rules to deal with issues specific to particular types of business.

## Public infrastructure

### TIOPA10/PT10/CH8

Special rules are applied in relation to [Public Infrastructure](#). The key effect of the elective rules is to exclude certain amounts of interest and similar expense paid to unrelated parties from [tax-interest expense](#).

These rules only apply to companies that are fully taxed in the UK and whose assets and income are, ignoring insignificant amounts, entirely related to the provision of public infrastructure assets. To qualify an election must be made, which remains in effect for a minimum of five years.

There are certain consequential and additional effects of this treatment. In particular, the tax-EBITDA of a qualifying infrastructure company is treated as nil, and equivalent adjustments are made for the purpose of calculating the [group ratio percentage](#).

There are special rules for [joint venture companies](#), [partnerships](#) or other transparent entities within the public infrastructure rules.

## Particular type of company or business

### TIOPA10/PT10/CH9

Specific rules within chapter 9 ensure the Corporate Interest Restriction operates as intended for the following types of company or business:

- [Banking companies](#)
- [Oil and Gas](#)
- [Real Estate Investment Trusts \(REITS\)](#)
- [Insurance Entities](#)
- [Members of Lloyds](#)
- [Shipping companies subject to tonnage tax](#)

- [Co-operative and community benefit societies](#)
- [Charities](#)

## **Anti-avoidance provisions**

**TIOPA10/PT10/CH10**

A [regime anti-avoidance rule](#) exists to counteract the effect of avoidance arrangements.



# CFM95270 Interest restriction: Core rules: Transitional Rules

## F(No.2)A17/SCH10/PT4

The Corporate Interest Restriction [has effect from 1 April 2017](#). All [periods of account](#) of a [worldwide group](#) beginning on or after that date will be subject to the Corporate Interest Restriction.

The [Worldwide Debt Cap rules are repealed](#) with effect from 1 April 2017.

### Periods straddling 1 April 2017

A group may draw up financial statements for a period that straddles the commencement date of 1 April 2017. So long as they cover a period not exceeding 18 months and are drawn up within 30 months of the beginning of the period, they will determine the first period of account to which the interest restriction is applied, and may be utilised as the starting point for determining amounts.

Where there is a straddling period of account, the legislation treats the group as having drawn up statements running from the beginning of the straddling period to 31 March 2017 and from 1 April 2017 until the end of the straddling period, in place of the actual financial statements. The former period is subject to WWDC and the latter to the Corporate Interest Restriction.

Where it is expedient to apportion amounts included in the actual financial statements between these two periods, the apportionment defaults to a time basis. However if this would work unjustly or unreasonably, the apportionment must be made on a just and reasonable basis.

The basic requirement is that the accounts treated as drawn up should be in accordance with International Accounting Standards. But if other [acceptable financial statements](#) are drawn up in accordance with other standards, accounts for the period to which the Corporate Interest Restriction applies are treated as drawn up under those standards.

Where [no consolidated financial statements exist](#) the group is subject to the Corporate Interest Restriction as if it had drawn up financial statements beginning 1 April 2017. There is detailed guidance on determining [periods of account](#) and how amounts are to be ascertained.

## Commencement and transition

There are a number of additional [commencement and transitional provisions](#) applied in certain circumstances, including [transitional rules for qualifying infrastructure companies](#).

# CFM95280 Interest restriction: Core rules: Administration

## TIOPA10/SCH7A

The Corporate Interest Restriction rules differ from the normal corporation tax regime in that the computational provisions work mainly at the level of the worldwide group. Only once the group level computations have been made can [disallowances](#) of net interest expense, or [reactivations](#) of previously disallowed amounts, be allocated to UK group companies. TIOPA10/SCH7A contains legislation designed to enable efficient administration of the provisions. Both [detailed guidance](#) and a more [comprehensive summary](#) are available.

The administrative rules are built around the [interest restriction return](#). Where the [aggregate net tax-interest expense](#) exceeds or is close to the [de minimis amount](#), a group will normally appoint a [reporting company](#) to act on its behalf. If it does not, HMRC may do so.

In the unusual event that a tax-interest restriction arises but there is no reporting company each UK group company in a worldwide group will need to compute its share of the restriction and include it in its company tax returns.

Normally a reporting company will allocate the restriction at its discretion, but a company that does not consent to this may not be allocated more than a pro-rata share, proportional to its share of the group's tax-interest expense.

Reactivations of previous interest restrictions may only occur where there is a reporting company. Again, the allocation is at the discretion of the reporting company.

The Corporate Interest Restriction has its own [enquiry procedures](#), based on CTSA enquiry procedures adapted to fit the group context. These are supported by [information powers](#) and [penalties](#) for non-compliance.

# **CFM95300 Interest restriction: Groups, periods and financial statements: Contents**

[CFM95310 Interest restriction: Groups, periods and financial statements: Overview](#)

[CFM95320 Interest restriction: Groups, periods and financial statements: The worldwide group: Contents](#)

[CFM95400 Interest restriction: Groups, periods and financial statements: The period of account: Contents](#)

[CFM95440 Interest restriction: Groups, periods and financial statements: Financial statements: Contents](#)

# CFM95310 Interest restriction: Groups, periods and financial statements: The worldwide group: Overview

## TIOPA10/Chapter 11

The rules apply on a group wide basis, rather than company-by-company, and there are several fundamental steps that must be taken when applying the rules.

### The worldwide group

The first step is to identify the [worldwide group](#), which typically consists of the ultimate parent and all its consolidated subsidiaries.

### Period of account

Once this is established, that group's [period of account](#) must be determined. In most cases, this will simply match the period for which financial statements of the group are drawn up by the ultimate parent.

There are specific provisions for cases such as where no statements are drawn up for the group, are drawn up for a period of more than 18 months or are drawn up more than 30 months from the start of the period. In such cases a default period of account is prescribed by the legislation, although the ultimate parent may be able to elect for a different period of account to be used.

### Financial statements

Once the composition of the group and the period of account is known, figures can then be extracted from the [financial statements](#) and used for the relevant calculations. Typically the provisions work by reference to amounts recognised as items of profit or loss within the group's income statement.

There are provisions which deal with cases where no financial statements are prepared, the financial statements are not acceptable, or the set of entities consolidated in the financial statements is not exactly the same as the membership of the worldwide group.

# **CFM95320 Interest restriction: Groups, periods and financial statements: The worldwide group: Contents**

[CFM95330 Interest restriction: Groups, periods and financial statements: The worldwide group: Overview](#)

[CFM95335 Interest restriction: Groups, periods and financial statements: The worldwide group: Ultimate Parent](#)

[CFM95340 Interest restriction: Groups, periods and financial statements: The worldwide group: Relevant entity](#)

[CFM95350 Interest restriction: Groups, periods and financial statements: The worldwide group: Non-consolidation conditions](#)

[CFM95360 Interest restriction: Groups, periods and financial statements: The worldwide group: Consolidation of subsidiaries](#)

[CFM95380 Interest restriction: Groups, periods and financial statements: The worldwide group: Stapled entities](#)

[CFM95390 Interest restriction: Groups, periods and financial statements: The worldwide group: Business combinations](#)

[CFM95395 Interest restriction: Groups, periods and financial statements: The worldwide group: Investment managers](#)

# CFM95330 Interest restriction: Groups, periods and financial statements: The worldwide group: Overview

## TIOPA10/S473

Corporate Interest Restriction operates by looking at the overall position of the worldwide group rather than at companies in isolation. The [fixed ratio method](#), for example, is based on the aggregated amount of [tax-EBITDA](#) across the group. It is therefore vital to establish which companies comprise the group.

The worldwide group consists of:

- An [ultimate parent](#), and
- its [consolidated subsidiaries](#) (if any).

### Single-company worldwide group

In the case of an ultimate parent with no consolidated subsidiaries, the 'worldwide group' will simply consist of the ultimate parent company. This is referred to as a 'single-company worldwide group'.

### Multi-company worldwide group

In most cases the ultimate parent will have at least one consolidated subsidiary. Where a worldwide group has more than one member this is referred to as a 'multi-company worldwide group'.

### International Accounting Standards

A worldwide group is determined by reference to international accounting standards.

# CFM95335 Interest restriction: Groups, periods and financial statements: The worldwide group: Ultimate Parent

## TIOPA10/S473

The identification of the ultimate parent is critical in determining the worldwide group.

An ultimate parent is a [relevant entity](#) which is not a [consolidated subsidiary](#) of another entity that is itself an ultimate parent.

More precisely it is a relevant entity that meets one of the two non-consolidated conditions.

- The first consolidation condition will be met where the entity is a member of an IAS group and is not a [consolidated subsidiary](#) of an entity that is a relevant entity that meets the first non-consolidation condition.
- The second consolidation condition will be met where the entity is not a member of an IAS group.

### International accounting standards

An ultimate parent is determined by reference to international accounting standards (IAS).

### Example

A Ltd is widely held and produces group accounts under IAS including its 100% subsidiary (B Ltd) and B Ltd's 100% subsidiary (C Ltd) consolidated on a line-by-line basis. A Ltd is classified under IFRS10 as an investment entity and its accounts also show an entity (X Ltd) as an investment carried at fair value. X Ltd is owned 100% by C Ltd and C Ltd produces accounts consolidating X Ltd on a line-by-line basis.

A Ltd will be an ultimate parent because it is a relevant entity which is part of an IAS group and is not a consolidated subsidiary of another entity.

B Ltd and C Ltd cannot be ultimate parents because they are consolidated by A Ltd and so fail the first non-consolidation condition.

X Ltd is a member of an IAS group but is not a consolidated subsidiary of A Ltd because it is shown at fair value. It is consolidated in C Ltd's accounts, but



C Ltd cannot pass the first non-consolidation condition above, because it is a consolidated subsidiary of A Ltd. X Ltd therefore does pass the first non-consolidation condition and is capable of being an ultimate parent.

There are therefore two ultimate parents, in A Ltd and X Ltd, and so two worldwide groups.

### **Portfolio investments of insurance entities**

- An exception is made by TIOPA10/S453 for portfolio investments of [insurance entities](#).

# **CFM95340 Interest restriction: Groups, periods and financial statements: The worldwide group: Relevant entity**

## **TIOPA10/S474**

An entity can only be an [ultimate parent](#) if it is a relevant entity.

A relevant entity is:

- A company, or
- An entity whose shares, or other interests, are listed on a recognised stock exchange and sufficiently widely held.

### **Company**

A company is defined for the Corporation Tax Acts by CTA2010/S1121 as any body corporate or unincorporated association, but does not include a partnership, local authority or a local authority association.

### **Sufficiently widely held**

Shares, or other interests, which are listed on a recognised stock exchange will be sufficiently widely held where no participator in the entity holds more than 10% by value of all the shares or other interests.

### **Excluded entities**

Certain entities are specifically excluded from being relevant entities. These are:

- The Crown
- A Minister of the Crown
- A government department
- A Northern Ireland department
- A foreign sovereign power

## **Example**

Interests in a Limited Liability Partnership (Alpha LLP) are listed on the London Stock Exchange and are held by a number of participators. The interests have a total value of £100m. One participator holds £12m worth of the interests which equates to 12%. Alpha LLP is therefore incapable of being a relevant entity because it does not fall within the definition of a company and, although it is listed on a recognised stock exchange, one participator holds an interest that is over the 10% threshold.

# **CFM95350 Interest restriction: Groups, periods and financial statements: The worldwide group: Consolidated and non-consolidated subsidiaries**

## **TIOPA10/S475**

The rules differentiate between consolidated and non-consolidated subsidiaries. This distinction is important when determining the composition of the [worldwide group](#) because this includes the ultimate parent and all its consolidated subsidiaries. Subsidiaries which are not consolidated will therefore not be included in the group. They may instead be capable of forming their own groups.

### **Non-consolidated subsidiaries**

X will be a non-consolidated subsidiary of Y where:

- X is a subsidiary of Y, and
- if Y were required to measure its investment in X, it would be required to do so using fair value accounting, or
- X is categorised as a 'held for sale' or 'held for distribution to owners' asset (this applies from 1 January 2018).

In particular, an entity will be a non-consolidated subsidiary where it is required to be measured at fair value as a result of being a portfolio investment of an investment entity under international accounting standards.

### **Consolidated subsidiaries**

If X is a subsidiary of Y but fails the non-consolidated subsidiary test then it will be a consolidated subsidiary of Y by default.

### **International accounting standards**

Non-consolidated subsidiaries and consolidated subsidiaries are determined by reference to international accounting standards (IAS). 'Held for sale' and 'held for distribution to owners' also take their meaning from IAS.

# CFM95360 Interest restriction: Groups, periods and financial statements: The worldwide group: Identity of the group

## TIOPA10/S476

The composition of the [worldwide group](#) can change over time as companies both join and leave the group. The rules contain provision for this and determine the identity of the worldwide group by reference to the [ultimate parent](#). This means that where the composition of the group changes, the identity of the group will be preserved as long as the ultimate parent remains the same.

### Example 1

A Ltd is the ultimate parent of a group which, at the start of the year, contains A's consolidated subsidiaries B Ltd, C Ltd and D Ltd. On 6 May, A Ltd disposes of its shares in C Ltd and on 28 August acquires all the shares of Z Ltd.

Throughout the year, there are therefore three different group compositions:

1 January - 6 May (A, B, C, D)

7 May - 28 August (A, B, D)

29 August - 31 December (A, B, D, Z)

Despite these different compositions, the ultimate parent (A) is consistent throughout meaning the worldwide group in the second and third periods is the same as the first.

### Example 2

At the start of the year, the group is the same as in Example 1 and so consists of A, B, C and D. On 30 September, S Ltd acquires A Ltd and becomes the ultimate parent of a group which includes S, A, B, C and D.

The ultimate parent changes from A to S at 30 September and therefore the identity of the group changes with it. The worldwide group after 30 September is therefore not the same as the one before that date.

# CFM95380 Interest restriction: Groups, periods and financial statements: The worldwide group: Stapled entities

## TIOPA10/S477

Some groups may have issued stapled stock: a combination of securities are traded together as one security on a stock exchange. A special purpose vehicle (SPV) might, for example, own a property which is managed by a company with the shares in the SPV being stapled to the shares in the management company.

Investors would therefore acquire shares in both the SPV and the management company making the shareholders of both entities the same. The stapling of the entities effectively makes them a single enterprise, both economically and commercially and the rules provide they are treated as such when looking at the [ultimate parent](#) of a [worldwide group](#).

### Deemed parent

S477 makes a provision for this situation by applying TIOPA10/PT10 as if the stapled entities were consolidated subsidiaries of an ultimate parent (the 'deemed parent'). This ensures all the stapled entities are included in the same group instead of each stapled entity heading up their own group as would otherwise be the case.

### Meaning of 'stapled'

Shares or other interests in one entity are 'stapled' to shares or other interests in others if the shares or other interests of the entities are in practice always traded together. Dealing in all stapled entities at the same time need not be obligatory; it can simply be advantageous because of the nature of rights attached to the shares.

### Example

The shares in company A include an obligation that on acquisition, shares must also be acquired in company B and company C. There are similar obligations which deal with the disposal of shares. All three entities are therefore stapled entities and will be treated as having a deemed parent meaning they all fall in the same [worldwide group](#).

# CFM95390 Interest restriction: Groups, periods and financial statements: The worldwide group: Business combinations

## TIOPA10/S478

Some groups will be structured such that they are not headed by a single ultimate parent. This will often be the case where two groups merge but do not reorganise, resulting in two separate entities at the top of the structure with their own subsidiaries and separate shareholders. They then operate as a single economic enterprise and typically will have a shared board of directors and base dividend payments on the performance of the single merged group. Without specific provision, the rules would act to treat the merged group as two separate groups.

### Deemed parent

S478 provides for entities which are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract. Such entities will be treated as if they were consolidated subsidiaries of an [ultimate parent](#) (the 'deemed parent') and will therefore be included in the same [worldwide group](#).

### Example

Group A comprises an ultimate parent (A Ltd) and all its consolidated subsidiaries. It merges with Group Z which comprises an ultimate parent (Z Ltd) and its consolidated subsidiaries. There is no reorganisation as part of the merger so there is no entity above either A or Z although they are treated as a single economic activity because they are a business combination under international accounting standards.

A Ltd and Z Ltd are therefore treated as if a deemed parent owned both companies with the result that they will both be in the same [worldwide group](#).

# **CFM95395 Interest restriction: Groups, periods and financial statements: The worldwide group: Investment managers**

## **TIOPA10/S454A**

### **Investments held by investment managers**

Investment managers will often invest in various groups alongside third parties through a vehicle ("S" in the legislation), typically a partnership. The investment manager will be required to consolidate S (and the entities below it) where certain conditions are met. For the purpose of TIOPA10/S473 there would therefore be a single worldwide group encompassing the investment manager as well as each investment.

This could be problematic where each investment is run independently because the application of the interest restriction would depend on the financial results of a notional wider group of otherwise unconnected businesses. The rules therefore exclude the entities that sit under S from the investment manager's worldwide group provided all three of the following conditions are met.

#### **Condition 1**

An entity ("S") is a member of a worldwide group because other group companies both:

- manage S, and
- hold rights or interests in S.

It does not matter whether a single group company both manages S and holds rights in it, or whether one group company manages it while another holds rights in it. For example, where S is a partnership, one group company may be the general partner while another group company may have an investment management agreement with the partnership. This will still meet the management condition above.

#### **Condition 2**

The entity managing S does so in the ordinary course of carrying on a business of providing investment management services.



### **Condition 3**

The management of S is not coordinated with the management of any other person or entity.

#### **Example 1**

X Plc is an investment manager which invests in a retail group (Alpha Group) alongside several third parties. The investment is held via an entity ("S") with the top company in Alpha Group, A Ltd, sitting directly below S.

X Plc draws up consolidated accounts and it is required to include S, and the Alpha Group, because a member of the worldwide group manages S and holds rights in that entity. The management of S is not coordinated with the management of any other person or entity, however, and TIOPA10/S454A will therefore be in point.

Alpha Group will therefore form a worldwide group in its own right comprising A Ltd as the ultimate parent and all its consolidated subsidiaries, in line with TIOPA10/S473. S will remain a member of the X Plc worldwide group.

#### **Example 2**

Following its investment in example 1, X Plc makes an additional investment in a manufacturing group (Beta Group) alongside third parties. The investment is held via an entity ("T") with the top company in Beta Group, B Ltd, sitting directly below T. T is managed by the same group company which manages S and a different group company also holds rights or interests in T.

The group company which manages S and T realises there are benefits in coordinating the management of S and T such that Alpha Group is directed by that company to source a product it sells from Beta Group. Because of this coordination, TIOPA10/S454A(1)(c) is not satisfied, meaning Alpha Group and Beta Group will both be included in the worldwide group of which X Plc is the ultimate parent.

# **CFM95400 Interest restriction: Groups, periods and financial statements: Period of account: Contents**

[CFM95410 Interest restriction: Groups, periods and financial statements: The period of account: Overview](#)

[CFM95420 Interest restriction: Groups, periods and financial statements: The period of account: Accounts-free periods](#)

[CFM95430 Interest restriction: Groups, periods and financial statements: The period of account: Election to alter the default period of account](#)

[CFM95435 Interest restriction: Groups, periods and financial statements: Period of account: Change in the ultimate parent](#)

# CFM95410 Interest restriction: Groups, periods and financial statements: The period of account: Overview

## TIOPA10/S480, S483, S484, S485, S486

The calculations under the [fixed ratio method](#) and the [group ratio method](#) need to be performed by reference to the [worldwide group's](#) period of account. It is therefore necessary to establish the group's period of account before these calculations can be undertaken.

The period of account might be obvious, for example if the group prepares financial statements. However, it is not as simple as this in all cases, and so there are also provisions for groups that do not draw up financial statements.

The period of account for the Corporate Interest Restriction can be determined by working through the steps below. If the answer to a question is sufficient to define the period of account no further steps will normally need to be considered and this is the period that should be used.

The one exception to this is where there is a [change in the ultimate parent](#) part way through the resulting period.

### **STEP ONE: Does the ultimate parent prepare financial statements for the group?**

If the ultimate parent does [draw up financial statements](#) for the group then the period covered by these accounts is taken as the worldwide group's period of account (s480), unless the accounts are for a period exceeding 18 months in duration or are drawn up more than 30 months after the start of the period (s487).

### **STEP TWO: Does the ultimate parent prepare its own financial statements?**

If the ultimate parent of a [multi-company group](#) fails to draw up financial statements for the group, but does [draw up financial statements](#) for itself, then the period of account used to produce these singleton accounts is taken as the worldwide group's period of account (s484).

Note that the ultimate parent can elect that this rule does not apply. The election is irrevocable and has effect in respect of periods ending on or after the date specified in the election. This cannot be before the date on which the election is made, although there are [extended time limits](#) in the first year of

the rules. There is no prescribed form for the election. If the group has a Customer Compliance Manager (CCM), elections can be sent to them, otherwise see the CIR internet page for where to send elections.

**STEP THREE: Do no such financial statements exist?**

If the ultimate parent does not draw up financial statements for the worldwide group and step two does not apply, then the group can either:

- use the default period of accounts for the [accounts free period](#) as prescribed by the rules (s485), or
- make an [election](#) to override the default treatment and specify the period of account (s486).

# CFM95420 Interest restriction: Groups, periods and financial statements: The period of account: Accounts-free periods

## TIOPA10/S485

The rules provide for the situation where the [ultimate parent](#) does not [draw up financial statements](#) for either the group or itself. Where this is the case, it is necessary to first determine the accounts-free period and then, secondly, determine the resulting default period of accounts based on this period.

### Accounts-free period

The accounts-free period is taken to be any period which begins on or after 1 April 2017 throughout which the worldwide group exists but no financial statements for the group are prepared or treated as prepared (other than in consequence of s485 or s486 for the accounts-free period). Financial statements are treated as prepared for the worldwide group if, for example, the ultimate parent draws up statements for itself or for a different group.

### Default period of accounts

If the accounts-free period is 12 months or less then the period of account is taken to be the accounts-free period.

If the accounts-free period is longer than 12 months, that period is broken up into 12 month period of accounts starting on the first day of the accounts-free period.

### Example

A Ltd is the ultimate parent of a group but does not produce group accounts because its residence in the Cayman Islands means there is no obligation to do so. A Ltd ceases to be ultimate parent on 1 September 2019.

The accounts-free period will therefore run from 1 April 2017 to 31 August 2019, resulting in the following default periods of account:

- 1 April 2017 - 31 March 2018 (12 months)
- 1 April 2018 - 31 March 2019 (12 months)
- 1 April 2019 - 31 August 2019 (5 months)

## **Election**

A company can make an [election to alter the default period of account](#).

# CFM95430 Interest restriction: Groups, periods and financial statements: The period of account: Election to alter the default period of account

## TIOPA10/S486

Where the [ultimate parent](#) does not [draw up financial statements](#), the rules in s485 determine the default periods of account in the [accounts-free periods](#). This may result in an arbitrary accounting date which does not coincide with the year-end of any of the UK companies within the group and could represent a large compliance burden.

Groups therefore have the option to override this treatment by electing for a specific period of account to be used instead of the period of account prescribed by the rules.

### The election

The election can only apply to default twelve month periods within the accounts-free period. The election works by starting the specified period of account on the same day as the default period of account but then lets the company choose the end day. The end day must fall within the accounts-free period and must be within eighteen months of the start day.

The election must be made by the ultimate parent before the end day and is irrevocable, although there are [extended time limits](#) in the first year of the rules.

### Subsequent elections

Although once made the election is irrevocable, the election relates to a specific default period of account and the accounts-free period might contain several of these where it spans multiple years. An ultimate parent could therefore make an election for a default period (the earlier elected period) and then make a subsequent election for a later period. If this is the case, the end day for the later elected period must be three years or more after the end day of the earlier elected period.

### Example

The accounts-free period of a group runs from 1 April 2017 to 31 August 2019 and s485 prescribes the following default periods of account:

- 1 April 2017 - 31 March 2018 (12 months)
- 1 April 2018 - 31 March 2019 (12 months)
- 1 April 2019 - 31 August 2019 (5 months)

The majority of UK group companies use a period of account which runs from 1 July to 30 June however so the ultimate parent elects this to apply as the period of account. The periods of account in the accounts-free period will now be:

- 1 April 2017 - 30 June 2018 (15 months)
- 1 July 2018 - 30 June 2019 (12 months)
- 1 July 2019 - 31 August 2019 (2 months)

Note the group could also have chosen for the first period of account to run from 1 April 2017 to 30 June 2017 (3 months) followed by an additional period of account from 1 July 2017 to 30 June 2018 (12 months).

### **Double election**

Note that where [the ultimate parent of a multi-company group fails to draw up financial statements for the group, but does draw up financial statements for itself](#), then the period of account for the group will typically follow the period for which those financial statements are prepared.

However, it can still take advantage of the above election (under S486) to specify a period of account by electing (under S484) that the rule to follow the solus financial statements is to be ignored.



# CFM95435 Interest restriction: Groups, periods and financial statements: Period of account: Change in the ultimate parent

## TIOPA10/S483

The [ultimate parent](#) of a [worldwide group](#) might [draw up financial statements](#) for a period, but only be the ultimate parent of the group for a part of that period.

Where this is the case, those financial statements are ignored and financial statements are instead treated as drawn up in respect of the part of the period where the entity was the ultimate parent. As a result it is this shorter period that is the [period of account](#) for the group.

### Example

An entity draws up consolidated financial for the period 1 April 2018 to 31 March 2019 but was only an ultimate parent from 1 September 2018 to 31 March 2019.

Its period of account therefore runs from 1 September 2018 to 31 March 2019. The actual financial statements prepared by the group are ignored and the entity is treated as having produced consolidated financial statements for the period 1 September 2018 to 31 March 2019.

# **CFM95440 Interest restriction: Groups, periods and financial statements: Financial statements: Contents**

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# CFM95450 Interest restriction: Groups, periods and financial statements: Financial statements: Overview

## TIOPA10/S479

The financial statements of a [worldwide group](#) play an important role in certain calculations necessary under the rules.

In particular, the amounts recognised in the financial statements will be relevant for the calculation of [adjusted net group-interest expense](#) needed for the [fixed ratio debt cap](#). They will also be used for the calculation of [qualifying net group-interest expense](#) and [group-EBITDA](#) figures which drive the group ratio percentage and [group ratio debt cap](#).

References to 'financial statements' for a period mean:

- In the case of a [multi-company group](#), the consolidated financial statements of the ultimate parent and its subsidiaries.
- In the case of a [single-company group](#), the financial statements of the ultimate parent.

The basic rule is to use the actual financial statements drawn up for the [period of account](#).

However, this is subject to specific provisions to deal with the cases that:

- Financial statements involve [consolidation of the wrong subsidiaries](#).
- [Financial statements are not acceptable](#).
- [No financial statements are drawn up](#).

### **Consolidated statements not available**

Exceptionally, an ultimate parent may prepare consolidated accounts but refuse to make them available even to UK companies within the group. CCMs and other HMRC staff should be prepared to discuss a pragmatic solution with any UK group or sub-group that genuinely finds itself in such a situation.

# **CFM95460 Interest restriction: Groups, periods and financial statements: Financial statements: Consolidation of wrong subsidiaries**

## **TIOPA10/S481**

Where the [ultimate parent](#) of a multi-company group has prepared consolidated financial statements, no adjustments to the scope of the consolidation will be required if this comprises the ultimate parent and all its [consolidated subsidiaries](#).

There may be instances, however, where the accounts do not consolidate all entities in the [worldwide group](#) or where they consolidate entities that are not members of the worldwide group. This could be the case where the ultimate parent prepares accounts under a different accounting framework to international accounting standards (IAS).

The rules test the financial statements by looking at what subsidiaries would be included if consolidated accounts were prepared under IAS. Adjustments to the actual statements can then be made based on the application of this test.

Where a subsidiary would have been consolidated under IAS but is not consolidated in the actual financial statements, they are to be adjusted to consolidate the results of that entity. Likewise, where the financial statements include a subsidiary which would not be consolidated under IAS, they are to be adjusted to exclude the results of that subsidiary.

# **CFM95470 Interest restriction: Groups, periods and financial statements: Financial statements: Financial statements not acceptable**

## **TIOPA10/S482**

Financial statements are only 'acceptable' when they meet certain conditions. If they fail to meet these conditions then the actual statements drawn up are ignored and the calculations are based on the amounts that would have been included in international accounting standards (IAS) financial statements.

### **The conditions**

Financial statements will be treated as acceptable if one of the following conditions is met:

- A. They are IAS financial statements.
- B. They are not IAS financial statements, but the amounts recognised are not materially different from what would have been recognised in IAS financial statements.
- C. They are drawn up in accordance with UK GAAP
- D. They are drawn up in accordance with generally accepted accounting principles and practice of one of the following territories
  - Canada
  - China
  - India
  - Japan
  - South Korea
  - United States of America

# CFM95480 Interest restriction: Groups, periods and financial statements: Financial statements: No financial statements

## TIOPA10/S484 and TIOPA10/S485

There might also be situations where the ultimate parent does [not draw up financial statements](#) for the group: for example, where the ultimate parent is a Delaware LLC and is not required to prepare consolidated accounts.

The rules here follow the rules for establishing the [period of account](#) for the [worldwide group](#). Where the ultimate parent does not draw up financial statements for a period of account then the rules treat international accounting standards (IAS) financial statements as having been drawn up for that period.

This applies in the following circumstances:

- [If the ultimate parent of a multi-company group fails to draw up financial statements for the group, but does draw up financial statements for itself](#)
- [Accounts-free periods](#)
- [Election to alter the default period of account](#)

### Example

Q plc is a UK quoted company, which prepares consolidated accounts for itself and its subsidiaries, drawing up the accounts to 30 June each year. In 2011, Q plc was taken into private ownership and de-listed. As part of this change, the shares in Q plc are acquired by a Jersey company, R Ltd (which has no other subsidiaries). R Ltd is owned by a consortium of investors, none of which controls the company.

The ultimate parent of the group is therefore R Ltd. Although Q plc continues to draw up group accounts to 30 June, R Ltd does not prepare consolidated accounts - it prepares individual accounts to 31 December (and these accounts are available to the directors of Q plc).

In order to apply the Corporate Interest Restrictions rules, Q plc and its subsidiaries must by default hypothesise that R Ltd has prepared consolidated accounts to 31 December under IAS, and derive the necessary figures from those notional accounts.

As this might involve considerable work, elections in the rules provide some flexibility. In this example, the group would need to make two elections. The group could [elect to disapply this rule](#) (under s484(3)) so to ignore R Ltd's financial statements, giving rise to an accounts-free period commencing on 1 April 2017. It can then [elect to alter the default period of account](#) (under s486) so that the first period of account runs from 1 April 2017 to 30 June 2018. In this case subsequent periods would also end on 30 June.

# **CFM95490 Interest restriction: Groups, periods and financial statements: Financial statements: Whether financial statements are drawn up**

## **TIOPA10/487**

A number of the rules for determining the correct [period of account](#) and [financial statements](#) depend of whether the [ultimate parent](#) draws up financial statements for the group or for itself. Whether financial statements have been drawn up for a period will be a question of fact.

### **Financial statements ignored**

However, financial statements drawn up for the group will be ignored in following two situations.

- They are for a period which is more than 18 months, or
- They are drawn up more than 30 months after the beginning of the period.



# CFM95500 Interest restriction: Groups, periods and financial statements: Financial statements: Amounts recognised in financial statements

## TIOPA10/489

Once the worldwide [financial statements](#) for a [period of account](#) are established, certain amounts recognised in these statements will need to be identified and used for the relevant calculations.

In particular, the amounts recognised in the financial statements will be relevant for the calculation of [adjusted net group-interest expense](#) needed for the [fixed ratio debt cap](#). They will also be used for the calculation of [qualifying net group-interest expense](#) and [group-EBITDA](#) figures which drive the [group ratio percentage](#) and [group ratio debt cap](#).

### Items of profit or loss

References in the rules to amounts 'recognised' in financial statements means amounts recognised as items of profit or loss. Typically this will be the amounts recognised in the 'income statement' (which can also be referred to as the 'profit and loss account') where this statement is prepared.

This will therefore exclude amounts taken to 'other comprehensive income'. However, amounts recognised in the financial statements will include amounts transferred (or recycled) from other comprehensive income to profit or loss.

### Analysis of amounts

A recognised amount can include an amount which itself is comprised within one or more amounts shown on face of the financial statements.

In the majority of cases it will not be possible simply to read the requisite figures from the income statement. It may often be possible to identify relevant amounts from the notes to the accounts. However, in some cases it may be necessary to interrogate the amounts shown in the accounts to identify their components.

For example, the line for 'finance costs' in a group's income statement is likely to contain not only amounts that would fall within [net group-interest expense](#), such as bank interest, but also such items as exchange differences on borrowings and unwind of discounts on provisions.

In addition, in calculating amounts of [adjusted net group-interest expense](#), qualifying net group-interest expense} and [group-EBITDA](#) it will be necessary to identify items such as dividends on preference shares and interest paid to related parties. These items may be shown in the notes to the accounts, or it may be necessary to identify these amounts from the accounting records which underpin the financial statements.

### **Different currencies**

Where the amounts in the financial statements are expressed in a currency that is not sterling, the relevant amounts within profit and loss will need to be translated into their sterling equivalents using the average rates for the period.

It may be appropriate for this to be done when the amounts have been aggregated and adjusted, rather than translating each individual recognised amount. Indeed, for the [group ratio percentage](#), it should not be necessary to translate amounts to sterling to calculate the ratio, as the percentage should be the same in whichever currency is used to perform the calculation.

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# CFM95605 Interest restriction: Tax-interest: Overview

## TIOPA10/PART10/CH3

The [Corporate Interest Restriction](#) aims to limit the tax deductibility of excessive corporate interest expense. The rules go wider than merely [interest in a legal sense](#), however, and also include payments economically equivalent to interest and expenses incurred in the raising of finance. The term tax-interest covers all such amounts of a company and is therefore a key definition when considering the scope of the rules.

TIOPA10/PART10/CH3 defines tax-interest amounts and does this by looking firstly at expense amounts and then at income amounts.

## Definitions

### Aggregate net tax-interest expense and income

The statutory definitions of the [aggregate tax-interest](#) expense and income for the group for a period of account is at TIOPA10/S390. These are defined by comparing:

- A. The total of the net tax-interest expense amount of each company in the group.
- B. The total of the net tax-interest income amount of each company in the group.
- C. Where A exceeds B there is an aggregate tax-interest expense for the amounts of the excess.
- D. Where B exceeds A there is an aggregate tax-interest income for the amounts of the excess.

### Net tax-interest expense and net tax-interest income

The statutory definition of net tax-interest expense and net tax-interest of a company in relation to a group's period of account is at TIOPA/S389. This is based on the amounts of [tax-interest expense and income](#) of the company that are attributable to the group's period of account.

These terms are defined by comparing:

- A. The total of the tax-interest expense amounts of the company for the group's period of account.
- B. The total of the tax-interest income amounts of the company for the group's period of account.
- C. Where A exceeds B there is a net tax-interest expense for the amount of the excess.
- D. Where B exceeds A there is a net tax-interest income for the amount of the excess.
- The object of the calculations is to arrive at an aggregate tax-interest figure for a particular period of account of a group. As a result, only amounts from a relevant accounting period (defined in S490 as one that falls wholly or partly within a period of account of the [worldwide group](#)) that are attributable to the group's period of account are included in the tax-interest of the company for the period of account. It is therefore necessary to adjust for any [disregarded periods](#) which occur where:
  - A relevant accounting period of a company in the group falls partly outside of the group's period of account, or
  - The company joins or leaves the group part way through the group's period of account.

# CFM95610 Interest restriction: Tax-interest: Tax-interest expense and income amounts

## TIOPA10/S382 and TIOPA10/S385

The tax-interest expense and income amounts are the amounts brought into account for tax which comprise amounts of interest or amounts economically equivalent to interest. These amounts are aggregated to derive the [net tax-interest expense](#) or [net tax-interest income](#) of a company for a group's period of account.

### Tax-interest expense amounts

The main definition is at s382 and includes:

- Relevant loan relationship debits,
- Relevant derivative contract debits, and
- Implicit financing costs in amounts payable under a relevant arrangement or transaction.

### Tax-interest income amounts

The main definition is at s385 and includes:

- Relevant loan relationship credits,
- Relevant derivative contract credits,
- Implicit financing income in amounts receivable under a relevant arrangement or transaction, and
- Consideration received for the provision of a guarantee.

### Specific rules

Where a company claims [double tax relief](#) in respect of a tax-interest income amount, the amount of income is reduced by the notional amount of income that is effectively sheltered from UK tax.

The following specific items are excluded from being tax-interest expense amounts:

- [Interest distributions made by co-operative and community benefit societies.](#)
- [Certain payments made to charities.](#)
- [Interest distributions made by certain collective investment vehicles.](#)

In addition, there are particular rules that apply for [securitisation companies within the permanent regime](#) to ensure the CIR rules operate as intended for this vehicles. The residual profit is treated as being tax-interest income amount, with an adjustment where a management fee is made to another group company.

# CFM95620 Interest restriction: Tax-interest: Disregarded periods

## TIOPA/S382(6)-(9)

The object of the calculations is to arrive at an [aggregate tax-interest](#) figure for a particular [period of account](#) for a [worldwide group](#). As a result, only amounts from a relevant accounting period that are attributable to the group's period of account are included in the tax-interest of the company for the period of account. A 'relevant accounting period' is defined in S490 as one that falls wholly or partly within a period of account of the worldwide group.

It is therefore necessary to adjust for any 'disregarded periods'. These are periods which:

- Fall outside the group's period of account.
- Relate to a time during which the company was not a member of the group.

Where either of these circumstances apply, the amounts to be included in tax-interest are reduced on a just and reasonable basis to exclude these periods. This can result in a reduction to nil.

This corresponds to the same issue of [disregarded periods](#) addressed in relation to the calculation of tax-EBITDA.

### Example

A company has an accounting period for the year ended 31 December 2017. It is a member of a group that has a period of account for the year ended 31 March 2018. Only the amounts attributable to the last nine months of the accounting period for the company will be included in calculating the adjusted corporation tax earnings for the group's period of account.

### Example

A company prepares accounts for a twelve month period ending 31 December 2018 and these accounts show a [tax-interest expense](#) amount of £240,000 which accrues evenly over the period. The company only became a member of the group on 1 June 2018 however meaning that the period 1 January to 31 May would be a disregarded period. The tax-interest expense amount should therefore be reduced by £100,000 ( $£240,000 \times 5/12$ ) as this refers to the disregarded period leaving an expense amount of £140,000.



## Meaning of just and reasonable basis

What 'just and reasonable basis' means in practice will depend on the particular facts and circumstances.

It should be noted that the concept of adjusted corporation tax earnings is based on the amounts that are brought into account for tax. Therefore it would be expected that significant consideration will be given to when an item would typically be brought into account for tax purposes.

So in particular consideration should be given to:

- The period in which amounts would be recognised in the company's financial statements if they were drawn up for particular periods.
- The period in which amounts would be brought into account by the company if it had a different accounting period.
- Ensuring that the amounts are in total fully attributed. In other words, if the accounting period is broken up into a number of periods which do not overlap and which, taken together, completely align with the accounting period in question, the total of the amounts attributed to those periods must equal the amount being attributed.

### Example

A company has a consistent level of borrowing costs throughout an accounting period. As a result, a simple time apportionment is likely to be appropriate for attributing the interest costs on the company's borrowing to a part of an accounting period.

### Example

A company makes a large acquisition part way through an accounting period, which is funded through the issue of a new bond which carries a fixed interest coupon. As a result, time apportioning the borrowings across the whole of the accounting period may not be appropriate. It is likely that apportioning the interest over the period from when the loan was taken out will be more appropriate.

### Example

A company has accrued interest payable on a loan to a connected company that was not paid within 12 months and hence was deferred under the {late paid interest rules}. The deduction for the late paid interest would be attributable to the part of the period in which the interest was paid.

## **Administration**

Where there is an enquiry into the Corporate Interest Restriction figures which involves a dispute over the just and reasonable basis, HMRC may make a determination of the just and reasonable basis to be used as part of process of closing the enquiry. The may appeal against the determination on the basis that the attribution is not just and reasonable.

# CFM95630 Interest restriction: Tax-interest: Relevant loan relationship amounts

## TIOPA10/S383 and TIOPA10/S386

The definition of [tax-interest](#) includes certain loan relationship debits and credits in the tax-interest amount. The legislation makes separate provision for debits (s383) and credits (s386) but these sections are similar in nature. They define a relevant loan relationship debit or credit as any amount that would be brought into account under the loan relationship provisions, whether by CTA09/PT3 or CTA09/PT5, unless it is an excluded amount.

### Exchange gains and losses

A loan relationship debit or credit will be excluded if it is in respect of an [exchange gain or loss](#).

### Impairment losses and reversals

Debits will also be excluded if they arise from an impairment loss, and symmetry is ensured by also excluding credits which arise from the reversal of a previous impairment.

# CFM95640 Interest restriction: Tax-interest: Loan relationship fair value accounting

## TIOPA10/S456

A company with a creditor loan relationship (ie. a loan receivable) will have several potential accounting treatments available when it includes the asset on its balance sheet, depending on the relevant accounting standard. It could measure it at amortised cost, for example, but could also be required to account for it at fair value through profit or loss.

Accounting at fair value will introduce an element of volatility into the company's accounts.

For example, if the company made a ten year bond of £100m with fixed coupons of 6%, the fair value of the loan would fluctuate due to changes in market expectations. If market rates increase the fair value of the asset would decrease to compensate (and vice versa).

These fair value movements will be included in [tax-interest](#) as [relevant loan relationship amounts](#) under either s383 or s386, and could impact on [interest capacity](#) from year to year. To prevent this uncertainty, the legislation allows an election to be made to apply the amortised cost basis to creditor loan relationships instead of applying fair value accounting. There is no prescribed form for the election. If the group has a Customer Compliance Manager (CCM), elections can be sent to them, otherwise see the [CIR internet page](#) for where to send elections.

### Time limits

The election must be made within twelve months from the end of the later of the first accounting period in which the company has a fair value creditor relationship, or, if that accounting period ended before 1 April 2017, the first accounting period ending after that date.

The election has effect for that and all subsequent accounting periods, and once made the election is irrevocable.

### Impairment losses

The {amortised cost} of a financial asset takes several factors into account such as any repayments of capital or impairments. Since impairment losses are excluded from the tax-interest amount (s383(3)(b)), there is no need to calculate any impairment losses when determining the amortised cost of the asset only to then strip out this component.

### **Example**

A Ltd is party to a £60m creditor loan relationship which it accounts for at fair value but has elected to apply the amortised cost basis when calculating its tax-interest amount. It transfers the loan to B Ltd who already holds a £250m creditor loan relationship accounted for at fair value and has not elected to use the amortised cost basis.

Post transfer, B Ltd will need to apply the amortised cost basis to the £60m loan and account for the £250m loan at fair value when calculating its tax-interest amount.

## **Application for insurance companies**

Where an insurance company makes a fair value accounting election the effect is modified slightly. This is to ensure the election provides these companies with a practical alternative to the calculation of tax-interest, reflecting the fact that they may hold a large number of loan receivables.

For these companies they should calculate the tax-interest amounts arising on these loan assets as being the amount of interest accrued in the period. In most cases, therefore, this will ignore amounts of premia, discounts and fees in respect of such instruments.

Where the insurer holds an interest in an OEIC, unit trust or offshore fund which is deemed to be a loan relationship under the {bond fund rules} (CTA09/S490) then it should calculate the tax-interest amounts arising from this deemed loan relationship on the basis of the amounts that can reasonably be regarded as equating to interest accrued for the period.

For OEICs and Authorised Unit Trusts, this will generally be determined by treating all interest distributions received from the fund in a period as falling within the definition of tax-interest while all non-interest distributions would not be tax-interest.

# CFM95650 Interest restriction: Tax-interest: Relevant derivative contract amounts

## TIOPA10/S384 and TIOPA10/S387

In calculating the [tax-interest](#) amount, debits and credits from certain derivative contracts are included because such contracts often play an important role in how a company is financed.

The legislation makes separate provision for debits (s384) and credits (s387) arising from derivative contracts but these are similar in nature. They broadly define a relevant derivative contract debit or credit as any amount that would be brought into account under the derivative contract provisions, whether by CTA09/PT3 or CTA09/PT5. This is subject, however, to further rules which look at the underlying subject matter of the derivative and exclude certain [other amounts](#).

### Underlying subject matter

Only derivatives with specified underlying subject matters give rise to relevant debits and credits. This ensures the rules target financing expenses as intended. The underlying subject matters which will be included are:

- Interest rates
- Any index determined by reference to income or retail prices
- Currency
- Corporate debt

### Subordinate or small value underlying subject matters

A derivative with any other subject matter will still be a relevant derivative contract provided that subject matter is either subordinate in relation to any of the above or of small value in comparison with the value of the underlying subject matter as a whole. This is determined at the point at which the company either enters into or acquires the contract.

### Example

A Ltd holds a £200m share portfolio which it shows in its accounts at fair value. It decides to hedge against any changes in the fair value of its investment by entering into a total return swap with a bank.

Under the terms of the swap, A Ltd will pay to the bank the 'total return' on the shares, essentially any dividends received as well as any capital growth on the shares. The bank will pay to A Ltd an amount equal to any decrease in the share's value and payments of interest at a floating rate (say LIBOR plus 1%) based on a £200m nominal value.

All amounts in respect of the swap should be excluded from the tax-interest amount because one of the key legs of the contract is related to the value of the shares which is not one of the underlying subject matters listed above.

### **Exchange gains or losses**

A derivative contract debit or credit will be excluded if it is in respect of an [exchange gain or loss](#).

### **Impairment losses and reversals**

Debits will also be excluded if they arise from an impairment loss, and symmetry is ensured by also excluding credits which arise from the reversal of a previous impairment.

### **Hedging a risk in a course of a trade**

The rules also give consideration as to the context of why the company is party to the derivative contract. This is necessary because some derivatives entered into are entirely unrelated to the financing of the company and are taken out in the normal course of trade.

Amounts arising from a derivative will therefore be excluded where it is both:

- Hedges a risk arising in the ordinary course of a trade (other than a risk arising in a financial trade)
- Was entered into for reasons wholly unrelated to the capital structure of the [worldwide group](#).

The term capital structure is taken to include both loans and share investments. This provision looks at the overall group position and the exclusion could therefore apply to a derivative entered into by one group company to hedge the position of another.

### **Example**

A company intends to purchase stock from an American company in six months' time with payment due in US Dollars on delivery. To mitigate its exchange rate exposure, the company enters into a currency forward contract

whereby it agrees to purchase a certain amount of US Dollars in six months for a fixed Sterling price.

The derivative is hedging a risk which arises in the ordinary course of trade and is entirely unrelated to the capital structure of the worldwide group. Debits from the forward will therefore be excluded from the tax-interest amount.

**Example**

A company borrows £1bn to fund an investment in a US subsidiary which is worth \$2bn (exchange rate of £1:\$2). To hedge the currency risk, the company enters into a currency forward to sell \$2bn for £1bn in one years' time.

The derivative here is part of the capital structure of the company and, as such, relevant debits and credits arising from the forward will be included in the tax-interest amount.

**Risks arising in the ordinary course of a financial trade**

Special provision is made for derivatives which hedge a financial trade. Where this is the case, any relevant debit or credit arising from the derivative will not be excluded where the risk relates to an amount which is included in the tax-interest amount. This means the treatment of the hedged item for tax-interest purposes should align with the treatment of the hedging instrument.



# CFM95660 Interest restriction: Tax-interest: Implicit financing costs

## TIOPA10/S382 and TIOPA10/S385

The [tax-interest](#) amount includes amounts in respect of the financing costs implicit in amounts payable under a relevant arrangement or transaction. This includes:

- A finance lease
- Debt factoring
- A service concession arrangement to the extent it is accounted for as a financial liability.

### Example

A company acquires the use of an asset under a five year finance lease with rental payments of £10,000 per month. The total due under the lease is therefore £600,000 whereas the cost of buying the asset outright would have been £500,000. This £100,000 difference is the implied financing expense over the term of the lease and an expense of £20,000 will be included in the tax-interest amount each year to reflect this. The tax-interest amount for both lessor and lessee should therefore include this amount.

### Hire Purchase Agreement

Under a hire purchase agreement a person may pay for an asset in instalments. The seller of the asset keeps ownership of the asset until the last payment has been made, but makes the asset available to be used by the purchaser. The purchaser usually has the right to acquire the asset at the end of the contract. Conditional sale agreements operate in a similar way, with the title passing automatically to the purchaser once they have made the final payment.

Often such arrangements are treated as a finance lease for accounting purposes. Where a hire purchase contract or conditional sale agreement is treated as a finance lease in the accounts then the implicit financing cost would be included in tax-interest, as income for the seller and expense for the purchaser.

# **CFM95670 Interest restriction: Tax-interest: Consideration received for provision of a guarantee**

## **TIOPA10/S385**

If a company approaches a bank for a loan, the bank might be reluctant to lend that company the required amount. The company might, for example, have a poor credit history or the amount requested might seem excessive compared to the expected return on it.

The bank may still approve the loan but require a guarantee in the case of a default, whereby the guarantor will take over the debt from the original debtor. The guarantor is likely to receive a fee from the debtor in return for providing the guarantee and s385(6) ensures that this will be included as an item of income in the guarantor's [tax-interest](#) amount.

The provision is needed because the guarantor will not be party to a loan relationship on providing the guarantee and so this amount cannot be a relevant loan relationship credit. By contrast, the expense to the debtor arises from its loan relationship with the bank and so will be included in tax-interest as a relevant debit.

# CFM95680 Interest restriction: Tax-interest: Double taxation relief

## TIOPA10/S388

When income arises in a foreign country to a UK resident company, and that income is taxed in that foreign country, the UK may give relief for the foreign tax suffered by crediting the foreign tax against the UK tax charged on that income. Where a credit is given under TIOPA10/S18, an adjustment should also be made to the amount included in tax-interest to take account of the foreign tax charge.

This adjustment is calculated by dividing the TIOPA10/S18 credit amount by the rate of corporation tax payable by the UK company. This gives the notional untaxed income amount which is then excluded from [tax-interest](#).

### Example

A Ltd earns interest of £10m in Country X with tax of £1.2m levied on this by the Xanadu Revenue Agency in the year ended 31 March 2018. A Ltd pays UK corporation tax at 19% but a credit for the foreign tax of £1.2m is given by virtue of TIOPA10/S18.

The notional untaxed income amount will be £6.3m arrived at by dividing the TIOPA10/S18 credit (£1.2m) by the rate of corporation tax payable (19%). The total interest income figure is then reduced by this amount resulting in a £3.7m credit being taken to tax-interest.

# **CFM95690 Interest restriction: Tax-interest: Co-operative and community benefit societies**

## **TIOPA10/S458**

Interest paid by a company will typically attract taxation relief whereas the declaring of a dividend will not. There are provisions however which deem certain distributions made by certain entities to be treated as payments of interest for certain taxation purposes.

Such provisions exist for dividends made by co-operatives and community benefit societies by virtue of CTA09/S499. Multiple investors will use such entities to invest in a return-producing asset and then distribute these returns back to the investors. Without special provisions, the entity would be taxed on income from the investment and then the investor would be taxed on the distribution of this income from company to investor which would be a disincentive to investors.

By treating distributions as interest, CTA09/S499 allows a deduction for such payments with the result that the investor is essentially treated as investing in the underlying asset directly. This treatment would mean such amounts would be included in the definition of tax interest however as a relevant loan relationship amount despite the payments not being equivalent to interest. TIOPA10/S348 therefore treats such amounts as not being tax-interest amounts of the company.

# CFM95695 Interest restriction: Tax-interest: Certain payments made to charities

## TIOPA10/S459

Charities are limited as to the activities they can undertake and cannot, for example, undertake commercial or trading activities. As a result, many charities will undertake more commercially driven activities through a subsidiary company which it funds with an interest-bearing loan.

The charity will bring the interest into account when calculating its profit, which will then be exempted from tax where the income is applied for a charitable purpose. The interest will therefore not be a [tax-interest income amount](#) where this exemption applies. By contrast, the subsidiary company will be charged to corporation tax on its profits and will claim a deduction for the interest it pays to the charity, which would ordinarily be included in [tax-interest expense](#).

This would result in tax asymmetry with debits in the company not matched with credits in the charity. This would lead to an increased net tax-interest expense for the group as a whole and a reduction in interest capacity.

### Exclusion where payment would qualify for Gift Aid

Paying interest to the charity is a means of the subsidiary returning profits to that charity. The subsidiary would also have the option of making a Gift Aid donation, provided the relevant conditions at CTA10/S191 - S202 are met. This means there is no tax advantage to be gained from choosing to fund a subsidiary by debt because, absent a loan, the subsidiary could simply make a charitable donation to its charity parent equal to its profits and claim relief for this amount.

The rules therefore do not treat interest paid by a company on a loan as being a [tax-interest expense amount](#) of the company where:

- The creditor is a charity
- The company is a wholly owned subsidiary of that charity, and
- Any donation made by the company to the charity would attract Gift Aid.

These tests do not concern themselves with whether a gift could legally be made and just look at whether such a gift would qualify for a charitable deduction if it were to be made.

# **CFM95697 Interest restriction: Tax-interest: Authorised Investment Funds and Investment Trust Companies**

## **Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964) - regulations 18, 69Z16 and 69Z61**

## **Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (SI 2009/2034) - regulation 12A**

Authorised Investment Funds (AIFs) and Investment Trust Companies (ITCs) are forms of collective investment vehicles, which enable a number of investors to pool their assets and invest in a professionally managed investment portfolio. The generally applicable tax policy for such vehicles is to move the point of taxation on the funds' income to investors and to tax investors in a broadly similar manner as would apply if they held the underlying investments directly, instead of through the investment vehicle.

One of the ways this is achieved is to permit AIFs and ITCs to be treated as making distributions of income from interest-producing assets as 'interest distributions', rather than being treated as 'dividend distributions'. Such interest deductions are deemed to be interest for the UK tax rules, and hence treated as deductible when calculating the corporation tax liability of AIFs and ITCs. Likewise, the investors are taxed as if they received interest.

Absent specific rules, the operation of the CIR could operate so to restrict the amount of deemed interest expense taken into account for taxation purposes for the AIF or ITC. The Corporate Interest Restriction (Consequential Amendments) Regulations 2017 make consequential amendments to the regulations dealing with AIFs and ITCs to address this.

### **Authorised Investment Funds**

The Authorised Investment Funds (Tax) Regulations provide that the following amounts are treated as not being a tax-interest expense amount for the purposes of interest restriction rules:

- Interest distributions by AIFs (regulation 18(2A)).
- Interest distributions by Property Authorised Investment Funds (PAIFs) (regulation 69Z16(2A)).

- Interest distributions by Tax Elected Funds (TEFs) (regulation 69Z61(2A)).

Note that PAIFs and TEFs are particular types of AIF.

### **Investment Trusts**

Regulation 12A of the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations provide that interest distributions paid by an ITC are treated as not being a tax-interest expense amount for the purposes of interest restriction rules.

# CFM95698 Interest restriction: Tax-interest: Securitisation companies

## The Taxation of Securitisation Companies Regulations 2006 (SI 2006/3296) - regulation 22

Broadly speaking, 'securitisation' is a method of raising debt finance which involves converting an income producing asset into marketable securities via a Special Purpose Vehicle (SPV).

There are specific taxation provisions for such vehicles and where they fall under the [permanent regime](#), they will be taxed in accordance with The Taxation of Securitisation Companies Regulations 2006. Such companies will be taxed on their [retained profit](#) as provided by the capital market arrangements, rather than the profit or loss shown in their statutory accounts.

If the securitisation company is instead taxed under the [interim regime](#), there are no corresponding adjustments to the interest restriction rules and taxable profits are computed using a particular form of UK GAAP.

Where a securitisation company does not fall within either the permanent or interim regime, it is taxed under general corporation tax principles.

### Tax-interest income

#### 'Residual profit'

Absent regulation 22, the interest restriction rules could potentially require the SPV under the permanent regime to unpick the 'retained profit' figure into its individual components so that it could calculate its tax-interest amount. To ensure the SPV does not have to split this figure out, the new regulation provides that the 'retained profit' figure to be the net tax-interest income amount for the SPV.

#### Management fees paid to another UK group company

The only circumstance in which a figure other than the retained profit is taken into account when calculating the tax-interest income amount is where the SPV pays a management fee to another UK group company that is not itself a securitisation company taxed under the permanent regime. Where such a fee is paid, the amount is added to the retained profit amount when calculating the tax-interest income amount.



## Tax-EBITDA

Regulation 22(1)(b) defines the adjusted corporation tax earnings of the SPV as a negative amount equal to the management fee paid to another UK group company.

Where no such fee is paid, the adjusted corporation tax earnings will therefore be nil.

## Group-interest expense

No consideration needs to be given as to whether the interest paid by the SPV is dependent on its results when calculating the [qualifying net group-interest expense](#) (QNGIE) because TIOPA10/S414(3)(b) is specifically turned off by regulation 22(2).

## Examples

### Example One

An SPV holds an asset which produces £50m of income a year and issues notes on which it pays out interest of £48m. The capital market arrangement under which the securitisation is arranged requires the SPV to retain £50,000. This is therefore the 'retained profit' amount.

Although the profit or loss account will show a profit of £2m, the net tax-interest income of the SPV will be £50,000.

The adjusted corporation tax earnings of the SPV will be nil.

### Example Two

The facts are the same as in Example One except the SPV also pays a £250,000 management fee to another UK group company.

The net tax-interest income of the SPV will be £300,000 being the sum of the retained profit (£50,000) and management fee (£250,000) amounts.

The adjusted corporation tax earnings of the SPV will be a negative amount of £250,000.

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# CFM95710 Interest restriction: Tax-EBITDA: Overview

## TIOPA10/PART10/CH6

The Corporate Interest Restriction operates to provide interest allowances based on the aggregate amount of 'tax-EBITDA' of the [worldwide group](#) for the [period of account](#).

This is a measure that is specifically defined in the rules and represents the UK taxable earnings for the group, before taking account of deductions for interest, capital allowances (the tax equivalent of 'depreciation') and amortisation. A number of other specific items are also adjusted for in accordance with the legislation.

## Background

'EBITDA' - Earnings before Interest, Tax, Depreciation and Amortisation – is a common concept, frequently employed in commercial loan agreements to measure the performance of the borrower year on year. It represents an attempt to move closer to a cash measure, rather than an accounting one, by removing major non-cash deductions from the figure of earnings.

The use of tax-EBITDA is based on this commercial concept, but it is distinct. In particular, because it is measuring the activity that is within the scope of UK corporation tax, only taxable profits and losses are included.

## Definitions

Tax-EBITDA is concept defined in Chapter 6 of Part 10 of TIOPA 10 in relation to the Corporate Interest Restriction legislation and is intended to represent income that is subject to tax in the UK.

### Aggregate tax-EBITDA

The statutory definition of the aggregate tax-EBITDA for the group for a period of account is at TIOPA10/S405. This is defined as the total of the [tax-EBITDA](#) of each company that was a member of the group at any point in the period of account.

The tax-EBITDA of a company can be a negative amount. However, where the total of amounts for all of the companies is negative, the amount of aggregate tax-EBITDA is taken to be nil.

## Tax-EBITDA of a company

The statutory definition of tax-EBITDA for a company in relation to a group's period of account is at TIOPA/S406(1). This based on the amounts of [adjusted corporation tax earnings](#) of the company that are attributable to the group's period of account. Note that if a company is not a UK group company, no amounts are brought into account for corporation tax, so its tax-EBITDA must be zero.

Where there is just a single [relevant accounting period](#) of the company for the group's period of account, the tax-EBITDA of the company is simply the [adjusted corporation tax earnings](#) for the relevant accounting period.

- Where, however, there is more than one such period, the tax-EBITDA of the company is the sum of [adjusted corporation tax earnings](#) for each one.
- The object of the calculations is to arrive at an aggregate tax-EBITDA figure for a particular period of account of a group. As a result, only amounts from a relevant accounting period that are attributable to the group's period of account are included in the adjusted corporation tax earnings of the company for the period of account. It is therefore necessary to adjust for any [disregarded periods](#) which occur where:
- A relevant accounting period of a company in the group falls partly outside of the group's period of account, or

The company joins or leaves the group part way through the group's period of account.

# CFM95720 Interest restriction: Tax-EBITDA: Adjusted Corporation Tax Earnings

## TIOPA10/S406, S407

The **adjusted corporation tax earnings** is the taxable profit or loss of a company for an accounting period adjusted for certain items. These amounts are aggregated to derive the [tax-EBITDA of a company](#) for a group's period of account.

It is based on the sum of two amounts:

- Condition A amounts are brought into account when determining taxable total profits of the period; and
- Condition B amounts are amounts which would have been brought into account in determining taxable profits for the period had there been sufficient profits.

Condition B is included to ensure all profits and losses are included in the calculation of the adjusted corporation tax earnings for the accounting period.

Note that the adjusted corporation tax earnings can be a negative amount, representing a loss for the period (taking account of the adjustments explained below).

### Adjustments

- In calculating the adjusted corporation tax earnings of the company for an accounting period certain adjustments are made. These operate to exclude amounts which would otherwise be included as Condition A or Condition B amounts.

The **excluded amounts** are outlined in s407(1). They comprise three types of adjustment.

Firstly amounts are excluded to calculate the taxable profit (or loss) before Interest, Depreciation and Amortisation. These consist of:

- Any [tax-interest income or expense amounts](#).
- Any capital allowances or balancing charges under CAA2001.
- Any {excluded relevant intangibles debit or credit}.

Secondly, amounts are excluded where they consist of losses arising in another group company or from another accounting period. There are, however, two exceptions to this:

- The exclusion for losses made outside the relevant accounting periods does not apply to capital losses under TCGA1992. Capital losses are, however, excluded from Condition B amounts. This means that capital losses are included only to the extent they are deducted from chargeable gains.
- The exclusion for group relief / consortium relief (including losses brought forward and surrendered under CTA10/S188CK), does not extend to any claim of group relief / consortium relief that is attributable to losses that arose while the company was not part of the group.

Finally, the effect of certain [qualifying tax reliefs](#) are also excluded to ensure that the Corporate Interest Restriction does not diminish the effect of those regimes.

Specific rules also follow for dealing with leasing transactions and the effect of [double taxation relief](#).

### **Disregarded periods**

- It is necessary to adjust the amounts included within adjusted corporation tax earnings for any [disregarded periods](#) which occur where:
- A relevant accounting period of a company in the group falls partly outside of the group's period of account, or
- The company joins or leaves the group part way through the group's period of account.

# CFM95730 Interest restriction: Tax-EBITDA: Disregarded Periods

## TIOPA/S406(5)-(7)

The object of the calculations is to arrive at an [aggregate tax-EBITDA](#) figure for a particular [period of account](#) for a [worldwide group](#). As a result, only amounts from a relevant accounting period that are attributable to the group's period of account are included in the [adjusted corporation tax earnings](#) of the company for the period of account.

It is therefore necessary to adjust for any 'disregarded periods'. These are periods which:

- Fall outside the group's period of account.
- Relate to a time during which the company was not a member of the group.

Where either of these circumstances apply, the amounts to be included in adjusted corporation tax earnings are reduced on a just and reasonable basis to exclude these periods. This can result in a reduction to nil.

This corresponds to the same issue of [disregarded periods](#) addressed in relation to the calculation of [tax-interest](#).

### Example 1

A company has an accounting period for the year ended 31 December 2017. It is a member of a group that has a period of account for the year ended 31 March 2018. Only the amounts attributable to the last nine months of the accounting period for the company will be included in calculating the adjusted corporation tax earnings for the group's period of account.

### Example 2

A company has an accounting period for the year ended 31 March 2018. It is a member of a group that has a period of account for the year ended 31 March 2018. However, the company leaves the group on 1 March 2018. Therefore only amounts attributable to the first 11 months of the accounting period for company will be included in calculating the adjusted corporations tax earnings for the group's period of account.

## Meaning of just and reasonable basis

What 'just and reasonable basis' means in practice will depend on the particular facts and circumstances.

It should be noted that the concept of adjusted corporation tax earnings is based on the amounts that are brought into account for tax. Therefore it would be expected that significant consideration will be given to when an item would typically be brought into account for tax purposes.

So in particular consideration should be given to:

- The period in which amounts would be recognised in the company's financial statements if they were drawn up for particular periods.
- The period in which amounts would be brought into account by the company if it had a different accounting period.
- Ensuring that the amounts are in total fully attributed. In other words, if the accounting period is broken up into a number of periods which do not overlap and which, taken together, completely align with the accounting period in question, the total of the amounts attributed to those periods must equal the amount being attributed.

#### **Example 1**

A trading company or property business accrues profits evenly throughout the year. As a result, a simple time apportionment is likely to be appropriate for attributing the taxable profits of the company to a part of an accounting period.

#### **Example 2**

A company makes a net chargeable gain of a disposal of an asset in an accounting period. This net chargeable gain would be attributable to the part of the period in which the [disposal](#) took place. Because the concept of adjusted corporation tax earnings is based on the inclusion of chargeable gains after the deduction of allowable losses, no attempt should be made to split out a net chargeable gain into the gross gain and allowable loss.

#### **Example 3**

A company makes a pension contribution in a period in line with previous periods. The deduction would be attributable to the part of the period in which the pension contribution was paid.

#### **Example 4**

A company makes an abnormally large pension contribution, such that an excess amount is being spread over four years. That spreading would be applied for attributing the amount of the deduction for the excess amount to a part of an accounting period.



## **Administration**

Where there is an enquiry into the Corporate Interest Restriction figures which involves a dispute over the just and reasonable basis, HMRC may make a determination of the just and reasonable basis to be used as part of process of closing the enquiry. The [reporting company](#) may appeal against the determination on the basis that the attribution is not just and reasonable.

# CFM95735 Interest restriction: Tax-EBITDA: Qualifying tax reliefs

## TIOPA10/S407(1)(h), TIOPA10/S407(3)

The effect of certain qualifying tax reliefs are also excluded from [adjusted corporation tax earnings](#) to ensure that the Corporate Interest Restriction does not diminish the effect of those regimes.

- [Film Tax Relief](#)
- [Television Tax Relief](#)
- [Video Games Tax Relief](#)
- [Theatre Tax Relief](#)
- [Orchestra Tax Relief](#)
- [Museums and Galleries Exhibition Tax Relief](#)
- [Patent box](#)
- [R&D Tax Relief](#)
- [R&D Expenditure Credits](#)
- [Land Remediation Relief](#)
- [Charitable Donations Relief](#)

# CFM95740 Interest restriction: Tax-EBITDA: Film Tax Relief

## TIOPA10/S407(3)(e)

Deductions for [Film Tax Relief](#) under CTA09/S1199 and Film Tax Credits claimed under CTA09/1202, are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Qualifying Companies which are directly involved in the production and development of a film, and meet the necessary criteria, can claim:

- an additional tax deduction of 100% of qualifying expenditure incurred on the pre-production, principal photography and post production of the film;
- if a loss is surrendered, a repayable tax credit of 25% of the loss up to the amount of qualifying expenditure.

### Effect for tax-EBITDA purposes

Film Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any additional deductions received over and above the actual amount of qualifying expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Conversely, the receipt of a tax credit of 25% of a surrendered loss would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming Film Tax Relief beyond the intention of the original relief.

Consequently, additional deductions and tax credits received under s1199 and s1201 respectively, should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95750 Interest restriction: Tax-EBITDA: Television Tax Relief

## TIOPA10/S407(3)(f)

Companies which are directly involved in the production and development of a television programme may be able to claim deductions or tax credits for [Television Tax Relief](#) under CTA09/S1216CF or S1216CH if they meet certain conditions. These deductions and credits are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

### Animation Tax Relief

- Animation Tax Relief is a type of Television Tax Relief providing specific rules for relief on animations. Further guidance on Animation Tax Relief can be found at [APC10000](#) onwards.

### Children's Television Tax Relief

Children's Television Tax relief is an extension of high-end television and animation relief but is specifically for the producers of children's television programmes.

### Amount of Tax Relief Available

Qualifying Companies eligible for Television Tax Relief or one of the extension reliefs can claim:

- an additional tax deduction of 100% of qualifying expenditure incurred on the production, running and closing the production;
- or, if the company makes a loss, a repayable tax credit of 25% of the loss up to the amount of qualifying expenditure.

### Effect for tax-EBITDA purposes

Television Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any additional deductions received over and above the actual amount of qualifying expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Conversely, the receipt of a tax credit of 25% of a surrendered loss would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming Television Tax Relief beyond the intention of the original relief.

Consequently, additional deductions and tax credits received under s1216CF and s1216CH respectively, should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95760 Interest restriction: Tax-EBITDA: Video Games Tax Relief

## TIOPA10/S407(3)(g)

Companies which are directly involved in the design and development of a video game are entitled to claim video game tax relief subject to certain conditions. Deductions for Video Games Tax Relief under CTA09/S1217CF and Video Game Tax credits claimed under CTA09/S1217CH are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Qualifying companies can claim:

- an additional tax deduction of 100% of qualifying expenditure incurred on the design, production and testing of the video game;
- or if the company makes a loss, a repayable tax credit of 25% of the loss up to the amount of qualifying expenditure.

Further guidance on Video Game Tax Relief can be found at [VGDC10000](#) onwards.

### Effect for tax-EBITDA purposes

Video Games Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any additional deductions received over and above the actual amount of qualifying expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Conversely, the receipt of a tax credit of 25% of a surrendered loss would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming Video Games Tax Relief beyond the intention of the original relief.

Consequently, additional deductions and tax credits received under s1217CF and s1217CH respectively should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95770 Interest restriction: Tax-EBITDA: Theatre Tax Relief

## TIOPA10/S407(3)(h)

Deductions and tax credits in relation to theatrical productions under CTA09/S1217H and CTA09S1217K are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Qualifying Theatrical Production Companies can claim:

- an additional tax deduction of 100% of qualifying expenditure incurred on the production, running and closing the production;
- or if the company makes a loss, a repayable tax credit of 20% (25% for touring performances) of the loss up to the amount of qualifying expenditure.

Further guidance on Theatre Tax Relief can be found at [TTR10000](#) onwards.

### Effect for tax-EBITDA purposes

Theatre Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any additional deductions received over and above the actual amount of qualifying expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Conversely, the receipt of a tax credit would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming Theatre Tax Relief beyond the intention of the original relief.

Consequently, additional deductions and tax credits received under s1217H and s1217K respectively, should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95780 Interest restriction: Tax-EBITDA: Orchestra Tax Relief

## TIOPA10/S407(3)(i)

Companies which are engaged in the production of qualifying live orchestral performances are entitled to claim orchestra tax relief. Deductions for Orchestra Tax Relief under CTA09/S1217RD and Orchestra tax credits claimed under CTA09/S1217RG are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Qualifying companies can claim:

- an additional tax deduction of 100% of qualifying expenditure incurred on the production and performance of the orchestral performance; or
- if the company makes a loss, a repayable tax credit of 25% of the loss up to the amount of qualifying expenditure.

### Effect for tax-EBITDA purposes

Orchestra Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any additional deductions received over and above the actual amount of qualifying expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Conversely, the receipt of a tax credit would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming Orchestra Tax Relief beyond the intention of the original relief.

Consequently, additional deductions and tax credits received under s1217RD and s1217RG respectively should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.



# CFM95790 Interest restriction: Tax-EBITDA: Museums and Galleries Exhibition Tax Relief

## TIOPA10/S407(3)(j)

Incorporated museums, galleries and other qualifying heritage institutions are entitled to claim tax relief for qualifying expenditure on new exhibitions, including those that tour.

Museums and Galleries Exhibition Tax relief is aimed at the charitable not for profit sector. Deductions for Museums and Galleries Exhibition Tax Relief under CTA09/S1218ZCE and tax credits under CTA09/S1218ZCH are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Qualifying companies can claim:

- an additional tax deduction of 100% of qualifying expenditure incurred putting on an exhibition, excluding costs whilst the exhibition is running; or
- if the company makes a loss, a repayable tax credit of 20% (25% for touring exhibitions) of the loss up to the amount of qualifying expenditure.
- The amount of tax relief available is subject to a restriction of £80,000 per exhibition (£100,000 for a touring exhibition).

### Effect for tax-EBITDA purposes

Museums and Galleries Exhibition Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any additional deductions received over and above the actual amount of qualifying expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Conversely, the receipt of a tax credit would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming Museums and Galleries Exhibition Tax relief beyond the intention of the original relief.

Consequently, additional deductions and tax credits received under s1218ZCE and s1218ZCH respectively, should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95800 Interest restriction: Tax-EBITDA: Patent box

## TIOPA10/S407(3)(I)

Deductions for profits from patents chargeable to a lower rate of corporation tax under CTA10/S357A are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Further guidance on the Patent Box regime can be found at [CIRD220000](#).

### **Effect for tax-EBITDA purposes**

The Patent Box Regime is one of the qualifying tax reliefs specified as an as an excluded amount in TIOPA10/S407(3)(I).

If brought into account for tax-EBITDA purposes, the additional Patent Box deduction would have the effect of distorting the core earnings of the company. Effectively, for a company which is subject to an interest restriction, this could reduce the benefit of the Patent Box regime by 30% (or higher if using the [Group Ratio Method](#)).

Consequently, an additional deduction received under CTA10/S357A should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# **CFM95805 Interest restriction: Tax-EBITDA: Intangibles**

## **TIOPA10/S408**

TIOPA10/S407 lists the items which are specifically excluded from amounts within tax-EBITDA (as defined by s406). These include at 1(c) the category of excluded relevant intangibles debits and credits. These are defined more specifically in s408.

Certain relevant intangible debits and credits which are brought into account through Part 8 of CTA 2009 are excluded from the calculation of adjusted corporation tax earnings when determining a company's tax-EBITDA. These are specified in Columns 1 and 2 of s408.

## **Intangible Assets Regime**

The rules in CTA09/PART8 apply to intangible fixed assets used on a continuing basis in the course of a company's activities. These rules set out how the gains and losses in respect of intangible fixed assets are calculated and dealt with for CT purposes.

Sums written off intangible fixed assets in a company's accounts are deductible for CT as income, rather than as capital items, through the provision of a deductible debit, whilst all receipts received from those assets are similarly treated as revenue items through a taxable credit.

Further guidance on the Intangible Assets Regime can be found at [CIRD10000](#).

## **Effect for tax-EBITDA purposes**

Debits excluded for tax-EBITDA purposes will mainly be amounts in respect of amortisation (including where a 4% election has been made) and losses on the disposal of an intangible fixed asset.

Credits received under the intangible assets regime to be excluded for tax-EBITDA purposes will mainly be amounts in respect of gains on the disposal of an intangible fixed asset and amounts to the extent that they represent the reversal of excluded amounts.

Going through each of the main provisions in the intangible fixed asset rules in turn:

- As credits received under s721 for receipts recognised as they accrue and s722 for receipts in respect of royalties, do not arise in respect of a reversal of previous debits brought into account under the regime, they do not need to be excluded for tax-EBITDA purposes;
- A credit is brought into account under s723 when a revaluation increases the account value of an intangible fixed asset. The amount of the credit received is capped at the total debits deducted for sums written off the asset, less any prior revaluation credits recognised for past periods. The credit should be excluded for tax-EBITDA purposes to the extent to which the debits reversed are excluded debits;
- Credits brought into account under s724, in respect of negative goodwill arising on the acquisition of a business, do not represent the reversal of a previous debit, and so should not be excluded;
- Where a company recognises an accounting gain which reverses some or all of an accounting loss recognised in a previous period which had given rise to a deductible debit, S725 provides a corresponding credit up to the amount of the gain. The credit received should be excluded for tax-EBITDA purposes to the extent to which the debit is an excluded debit;
- S728 provides that expenditure on an intangible asset gives rise to a deductible debit for the period of account in which it is written off to a company's profit and loss account. The resulting debits should not be excluded for tax-EBITDA purposes as these amounts are revenue in nature and not amounts in respect of capitalised cost of an intangible fixed asset;
- Conversely where the company obtains a deductible debit for expenditure that has been capitalised in the company's accounts under S729, S731, S735 and S736, the entirety of debit provided should be excluded for tax-EBITDA purposes;
- Where a company recognises an accounting loss which reverses some or all of an accounting gain recognised in a previous period which had given rise to a taxable credit, S732 provides a corresponding debit up to the amount of the loss. The debit received should be excluded for tax-EBITDA purposes to the extent to which the credit is an excluded credit;
- A credit is provided by S735 when a company realises an intangible fixed asset and the proceeds of realisation exceed the tax written-down value of the asset. The credit should be excluded for tax-EBITDA purposes to the extent to which the cost of the asset exceeds its tax-written-down value;

- S736 provides a taxable credit when a company realises an intangible asset shown on the company's balance sheet which has not been previously written down, and the proceeds of the realisation exceed the cost of the asset. The credit should be excluded for tax-EBITDA purposes as it does not represent the reversal of a previous debit;
- A credit is brought into account under S738 when a company realises an intangible fixed asset which has not been shown on the company's balance sheet. As this section applies where no debits have been previously given in respect of the asset, the credit received cannot represent the reversal of a previous debit, and so should not be excluded for tax-EBITDA purposes;
- Where a company incurs a loss in respect of abortive expenditure to acquire a fixed intangible asset, a corresponding deductible debit is taken into account under S740. As the expenditure incurred is not capitalised and does not represent the cost of acquiring an intangible asset, the debit provided should not be excluded for tax-EBITDA purposes.
- S872 applies where as a result of a change of accounting policy, there is a difference in the accounting value of an asset, comparing the value at the end of the previous period and the beginning of the current period. The amounts brought in are limited to the sum of previous debits and credits in respect of the writing down of the asset, and as such are therefore excluded for tax-EBITDA purposes.
- S874 applies the same treatment as s872 where the original asset of the earlier period is treated as two or more assets in the later period.

## Summary

The relevant intangible debits and credits brought into account under a provision of Part 8 of CTA 2009 and identified in Columns 1 and 2 of s408(1) and (2) TIOPA 2010 should be excluded when calculating taxable total profits of the period to determine a company's tax EBITDA as follows:

Section	Credits to be excluded?	Debits to be excluded?
S721 (Receipts as they accrue)	No	n/a
S722 (Other royalties)	No	n/a

S723 (revaluations)	Selective credits	n/a
S724 (negative goodwill)	No	n/a
S725 (reversal of accounting debit)	Selective credits	n/a
S728 (written off as incurred)	n/a	No
S729 (amortisation / impairment)	n/a	Yes - All debits
S731 (fixed rate)	n/a	Yes - All debits
S732 (reversal of accounting gains)	n/a	Selective debits
S735 (asset written down for tax)	Selective credits	Yes - All debits
S736 (not written down but on balance sheet)	No	Yes - All debits
S738 (not on balance sheet)	No	n/a
S740 (abortive exp)	N/a	No
S872	No	No
S874	No	No

# CFM95810 Interest restriction: Tax-EBITDA: R&D Tax Relief

## TIOPA10/S407(3)(b),(c)

Deductions for relief for expenditure on research and development under CTA09/S1044, s1063, s1068 or s1087, are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

### R&D Tax Relief for SMEs

An SME company may claim an additional deduction of 130% of qualifying expenditure incurred on research and development where the R&D is related to a trade which that company carries on or subsequently commences. This additional deduction may also be claimed where a SME company makes a qualifying payment to a subcontractor to carry out the R&D on their behalf.

Further guidance on R&D Tax Relief can be found at [CIRD80000](#).

### Vaccine Research Relief for Large Companies

A large company may claim an additional deduction of 40% of qualifying expenditure incurred on research and development relating to vaccines or medicines for the prevention or treatment of:

- Tuberculosis;
- Malaria;
- Human immunodeficiency virus; or
- Acquired Immune Deficiency Syndrome resulting from infection by human immunodeficiency virus in prescribed clades only.

Vaccine Research Relief will be abolished with effect from 1 April 2017, with relief available only in relation to expenditure incurred before that date.

- Further guidance on Vaccine Research Relief can be found at [CIRD75000](#).

### Effect for tax-EBITDA purposes

R&D Tax Relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).



Any additional deductions received over and above the actual amount of R&D expenditure incurred would have a distorting effect of reducing the earned profit of the company for tax-EBITDA purposes, decreasing the group's [interest capacity](#).

Consequently, additional relief received for expenditure on research and development under CTA09/S1044, s1063, s1068, or s1087 should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95820 Interest restriction: Tax-EBITDA: R&D Expenditure Credits

## TIOPA10/S407(3)(a)

R&D expenditure credits ("RDEC") provided by CTA09/S104A are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

The RDEC scheme provides a credit of 11% on qualifying expenditure incurred on research and development.

Further guidance on the RDEC scheme can be found at [CIRD89700](#).

### **Effect for tax-EBITDA purposes**

The RDEC scheme is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

The receipt of an RDEC would have the effect of increasing a group's interest allowance if included as an income item for tax-EBITDA purposes. This would serve to increase the benefit received for companies claiming the RDEC beyond the intention of the original relief.

Consequently, any R&D expenditure credits received under CTA09/S104A should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95830 Interest restriction: Tax-EBITDA: Land Remediation Relief

## TIOPA10/S407(3)(d)

Deductions for relief for expenditure on contaminated or derelict land, under CTA09/S1147 or s1149, are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Land Remediation Relief provides a deduction of 100%, plus an additional deduction of 50%, for qualifying expenditure incurred by companies. Further guidance on Land Remediation Relief can be found at [CIRD60050](#) onwards.

### Effect for tax-EBITDA purposes

Land Remediation Relief is one of the qualifying tax reliefs specified as an as an excluded amount in TIOPA10/S407(3).

Any land remediation relief received over and above the actual amount of expenditure incurred would have a distorting effect of reducing the group's [interest capacity](#) if included in the calculation of tax-EBITDA.

Consequently, the additional deduction of 50% received under the above-mentioned s1147 or s1149 should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# **CFM95840 Interest restriction: Tax-EBITDA: Charitable Donations Relief**

## **TIOPA10/S407(3)(k)**

Deductions for qualifying charitable donations, under CTA10/S189, are excluded from the calculation of [adjusted corporation tax earnings](#) when determining a company's tax-EBITDA.

Qualifying charitable donations made by a company are allowed as deductions from the company's total profits in calculating the corporation tax chargeable for an accounting period.

Being deducted from the company's total profits after any other relief from corporation tax other than group relief, the amount of charitable donations relief available is limited to the amount that reduces the company's total taxable profits to nil.

Further guidance on charitable donations relief can be found at [CTM09000](#).

### **Effect for tax-EBITDA purposes**

Charitable donations relief is one of the qualifying tax reliefs specified as an excluded amount in TIOPA10/S407(3).

Any deductions received for qualifying charitable donations would have the effect of reducing the earned profit of the company for tax-EBITDA purposes, reducing the amount of interest it can deduct.

Consequently, deductions received for qualifying charitable donations under CTA10/S189 should not be brought into account when calculating taxable total profits of the period to determine a company's tax-EBITDA.

# CFM95850 Interest restriction: Tax-EBITDA: Double Taxation Relief

## TIOPA10/S409

Where income is not or only partially subject to UK taxation as a result of double taxation relief, the amount on which corporation tax has not been payable is excluded from the calculation of tax-EBITDA.

When income arises in a foreign jurisdiction to a UK resident, and that income is taxable in the foreign jurisdiction, the UK may grant its resident double taxation relief for the foreign tax by crediting the foreign tax against the UK tax charged on the income. This may be given in accordance with the terms of a double taxation agreement between the UK and the foreign country in question, or it may be given unilaterally under the UK tax provisions.

The amount of foreign tax that can be credited against UK corporation tax is typically capped at the amount of the UK corporation tax that would arise on the profits chargeable in the foreign country.

Further guidance on Double Taxation Relief can be found at [INTM160000](#).

### Effect for tax-EBITDA purposes

The inclusion of income which is, due to the receipt of double taxation relief, in effect not subject to UK taxation, or only partly so, would inflate the tax-EBITDA above the amount of income that is actually liable to corporation tax.

Consequently, TIOPA10/S409 has the effect of reducing the tax-EBITDA by the amount of foreign tax actually credited in the UK, divided by the rate of corporation tax applicable to that income. This sum gives the implicit amount of profits on which corporation tax has not been payable.

### Example

If £100,000 is the foreign tax suffered on income of £1,000,000, the amount of profits on which corporation tax would, in effect, be charged has reduced by £100,000 divided by 19% (i.e. reversing the normal calculation to arrive at the profits which would correspond to that amount of corporation tax).

The reduction based on £100,000 represents corporation tax at 19% on profits of £526,316. This has the effect of grossing up the foreign tax amount to give a figure for the amount of profits which are covered by the foreign tax and therefore not actually taxed in the UK.

Normal calculation (before Corporate Interest Restriction):

Gross income	1,000,000		
Foreign tax		10%	100,000
Gross Income	1,000,000		
Corporation tax (before DTR)		19%	190,000
Double tax relief			(100,000)
Net corporation tax liability			90,000

Calculation for tax-EBITDA under Corporate Interest Restriction:

Taxable profits		1,000,000	
Reduced by profits effectively sheltered by DTR	100,000 divided by 0.19	(526,316)	
Amount remaining		473,684	

So only the £473,684 would be included in tax-EBITDA, not the full £1,000,000.

It will not matter what type of income the foreign tax relates to, so long as it is a type included in tax-EBITDA, since this calculation would operate purely by reference to the amount of credit relief given.

# CFM95900 Interest restriction: Group-Interest: Contents

[CFM95905 Interest restriction: Group-interest: Overview](#)

[CFM95910 Interest restriction: Group-interest: Net group-interest expense \(NGIE\): Contents](#)

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# CFM95905 Interest restriction: Group-Interest: Overview

## TIOPA10/S410-S415

The Corporate Interest Restriction uses three concepts of group-interest for particular aspects of the rules:

- [Net group-interest expense](#) is the total of the amounts of interest and other financing amounts recognised in the [worldwide group](#)'s financial statements as an item of profit or loss. This amount is added back to the group's profit before tax as part of the calculation of [group-EBITDA](#).
- [Adjusted net group-interest expense](#) takes the amount of net total group-interest and makes certain adjustments to this to provide a more refined measure of group-interest for the period. This is the absolute limit that is used for the [fixed ratio debt cap](#) as part of the fixed ratio method.
- [Qualifying net group-interest expense](#) restricts the adjusted net group-interest by excluding certain amounts. This is used in the numerator in the calculation of the [group ratio percentage](#) as part of the group ratio method. It is also the absolute limit that is used for the [group ratio debt cap](#) as part of the group ratio method.

## Derivatives

In calculating the group-interest amounts, fair value movements on [derivative contracts](#) that have a hedging function are 'disregarded' through the [application of the Disregard Regulations](#).

## Elections

The calculation of the group-interest amounts can be modified through the operation of the following elections:

- [Alternative calculation](#)
- [Non-consolidated investment](#)
- [Consolidated partnerships](#)



# **CFM95910 Interest restriction: Group-interest: Net group-interest expense (NGIE): Contents**

[CFM95920 Interest restriction: Group-interest: NGIE: Net group-interest expense: Overview](#)

[CFM95930 Interest restriction: Group-interest: NGIE: Relevant income and expense amounts](#)

[CFM95940 Interest restriction: Group-interest: NGIE: Pension schemes](#)

# CFM95920 Interest restriction: Group-Interest: Net group-interest expense: Overview

## TIOPA10/S410

The net group-interest expense is the total of the amounts of interest and other financing amounts recognised in the worldwide group's financial statements in its income statement for a period or account.

It is used in calculating the [group-EBITDA](#) by adding it back to profits before tax. It is also used to as the starting point for calculating the [adjusted net group-interest expense](#) which in turn is used for calculating the [qualifying net group-interest expense](#).

It is calculated as:

- the sum of amounts in respect of [relevant expense amounts](#) less
- the sum of amounts in respect of [relevant income amounts](#).

The amounts included in this calculation are those recognised in the [financial statements](#) for the period as [items of profit or loss](#).

Note that this can be a negative amount, representing an amount of net income.

## Capitalised interest

Net group-interest expense does not include amounts of capitalised interest and other financing amounts at the time they are capitalised in an asset or liability. This is because the calculation is based on amounts recognised in profit or loss.

There are special rules to deal with [capitalised interest](#) and other financing amounts that are subsequently recognised in profit or loss, for example by way of depreciation or part of a cost of sale of an asset.

Capitalised interest is not taken into account when capitalised because it is not recognised as an item of profit or loss in the group's financial statements and therefore will not fall within category A in S410(1). But, so long as the asset is not a [relevant asset](#), as defined in S417(5), an amount will be included in net group-interest expense in a period if it is:

- recognised as an item of profit or loss in the group's financial statements
  - as a result of writing down the carrying value of the asset; and
- relates to interest expense that had been capitalised

# CFM95930 Interest restriction: Group-Interest: Relevant income and expense amounts

## TIOPA10/S411

The calculation of [net group-interest expense](#) is based on the amounts of relevant expense amounts and relevant income amounts recognised in the group's financial statements.

The definitions of relevant expense and income amounts are aligned with the definition of [tax-interest](#), taking account of tax rules which treat certain arrangements as being loan relationships. The amounts included in the definitions are:

- Profits and losses, including interest and ancillary expenses, arising from [loan relationships](#) including from [related transactions](#). This aligns with the scope of the loan relationship rules at CTA2009/S306A and includes items such as discounts and premia on loan relationships.
- Dividends payable or receivable in respect of [preference shares](#) accounted for as a financial liability or asset.
- Profits and losses, including ancillary expenses, arising from [relevant derivative contracts](#) including from a [related transaction](#). However, amounts in respect of [non-finance related derivatives](#) are excluded.
- Financing income and financing charges implicit in payments made under a finance lease.
- Financing income and financing charges relating to debt factoring or any similar transaction.
- Financing income and financing charges implicit in payments made under a service concession arrangement that this is accounted for as a liability.
- Interest income and expense in respect of a [relevant non-lending relationship](#).
- Alternative finance return under [alternative finance arrangements](#).
- [Manufactured interest income and expense](#).

- Financing income and financing charges under a [repo or quasi-repo arrangement](#).
- Financing income and financing charges under a [structured finance arrangement](#), or which would be if the company in question were within the charge to corporation tax.

## **Ancillary expenses**

Ancillary expenses are defined as expenses incurred directly:

- in bringing, or attempting to bring, the loan or derivative into existence,
- in entering, or attempting to enter into, the related transaction,
- in making payments under the loan or derivative, or as a result of a related transaction, or
- in taking steps to ensure receipt of payments under the loan or derivative, or in accordance with a related transaction.

## **Exchange gains and losses**

[Exchange gains and losses](#) in respect of loan relationships and relevant derivative contracts are specifically excluded from being amounts of relevant expense amounts and relevant income amounts. Amounts of exchange gains and losses would not be included in the other categories.

## **Impairment losses and reversals**

Impairment losses in respect of loan relationships and relevant derivative contracts are specifically excluded from being amounts of relevant expense amounts and relevant income amounts. Likewise amounts representing the reversal of impairment losses are also excluded.

Amounts of impairment losses, and their reversals, would not be included in the other categories.

# CFM95940 Interest restriction: Group-interest: Pension schemes

## Pension schemes

Where a group has a funded pension scheme, then [relevant income and expense amounts](#) will not include any profits and losses on loans owed by or held by the pension scheme.

In this situation, all amounts recognised as [items of profit or loss](#) in the group's financial statements in respect of a pension scheme will be included in the calculation of [group-EBITDA](#). Amounts recognised in other comprehensive statements will not be included in either group-interest or group-EBITDA.

The reference to pension scheme takes a wide meaning, but there needs to be a legal framework which gives the pension scheme its existence. So, in particular, there needs to be one or more instruments or agreements which give effect to the pension scheme.

## Pension reserve assets

Where, however, a group holds pension assets on a company balance sheet as pension reserve assets rather than directly in a pension scheme then relevant income and expense amounts will include the profits and losses on these loans.

# CFM95950 Interest restriction: Group-Interest: ANGIE: Contents

[CFM95960 Interest restriction: Group-Interest: Adjusted net group-interest expense: Overview](#)

[CFM95970 Interest restriction: Group-Interest: Adjusted net group-interest expense: Capitalised interest](#)

[CFM95980 Interest restriction: Group-Interest: Adjusted net group-interest expense: Equity-accounted instruments](#)

[CFM95990 Interest restriction: Group-Interest: Adjusted net group-interest expense: Debt restructuring in insolvency](#)

[CFM96000 Interest restriction: Group-Interest: Adjusted net group-interest expense: Preference shares](#)

# CFM95960 Interest restriction: Group-interest: Adjusted net group-interest expense: Overview

## TIOPA10/S413

The adjusted net group-interest expense of a [worldwide group](#) for a period of account is the absolute limit that is used for the fixed ratio debt cap as part of the [fixed ratio method](#). It is also used to as the starting point for calculating the [qualifying net group-interest expense](#).

The adjusted net group-interest expense is based on the [net group-interest expense](#) of the group for the period, adjusted as follows:

- The amount is increased by upward adjustments. This is to include certain relevant expense amounts that would otherwise not be included and to exclude certain relevant income amounts that would otherwise be included.
- The amount is decreased by downward adjustments. This is to include certain relevant income amounts that would otherwise not be included and to exclude certain relevant expense amounts that would otherwise be included.
- The adjusted net group-interest expense cannot be negative. Where the above calculation produces a negative results, the adjusted net group-interest expense for the group for the period is nil.

## Specific adjustments

Adjustments are to be made in respect of the following to align with UK tax rules:

- To include all amounts of [capitalised interest](#) and other financing amounts at the time they are capitalised in an asset or liability.
- To include amounts in respect of certain [equity-accounted instruments](#).
- To exclude amounts in respect of [debt restructuring](#).
- To exclude amounts of dividends payable on [preference shares](#) that are recognised as a liability.



## **Elections**

The calculation of adjusted net group-interest expense can be modified through the operation of the following elections:

- [Group-EBIDTA \(Chargeable gains\) election](#)
- [Interest allowance \(alternative calculation\) election](#)
- [Interest allowance \(non-consolidated investment\) election](#)
- [Interest allowance \(consolidated partnerships\) election](#)

# CFM95970 Interest restriction: Group-interest: ANGIE: Capitalised interest

## TIOPA10/S413(3)(a), (b)

Capitalised interest needs careful treatment for calculating the [net group-interest expense \(NGIE\)](#) and the [adjusted net group-interest expense \(ANGIE\)](#). It represents one of the most significant adjustments made between these two amounts.

### Background

Under IAS, UK GAAP and other accounting frameworks it can be possible or mandatory to capitalise borrowing costs incurred in the acquisition, construction or production of certain qualifying assets. See for example section 25 of FRS 102.

Where such an accounting policy is adopted the borrowing cost is included as part of the 'cost' of the asset for accounting purposes. This means that borrowing cost is not recognised immediately to profit or loss, but is recognised in line with the asset in question. So, for example, in the context of property, plant or equipment this may be taken to profit or loss as part of the depreciation cost. Or, in the context of inventory, taken to profit or loss as part of the cost of sale.

The treatment of capitalised interest depends on the character of the asset in question. This is due to the calculation of [group-EBITDA](#) which already adds back depreciation in respect of [relevant assets](#) (broadly fixed assets and investments - see CFM96470). There are also differences in the tax treatment under UK tax law, which are reflected in the treatment under the [alternative calculation election](#).

### Net group-interest expense

Amounts of capitalised interest in the carrying value of the asset are not included in the calculation of NGIE as an item of relevant income or expense at the time of capitalisation as they are not comprised in an amount recognised as an item of profit or loss in the group's financial statements.

Where the asset is written off to profit or loss, then the treatment for NGIE will depend on the nature of the asset:

If the asset is a [relevant asset](#) as defined in S417(5), then no amount is included in NGIE in respect of the write off of the asset. This is to prevent

difficulties with the calculation of group-EBITDA as these amounts should be included within depreciation and hence will already have been added back.

However, where the capitalised interest is not in respect of a relevant asset then NGIE will include the amounts recognised in profit or loss related to the writing off of the asset. This ensures that the amount of group-EBITDA excludes amounts that relate to interest expense and other similar financing costs.

## **Adjusted net group-interest expense**

There are two adjustments made in respect of ANGIE for capitalised interest:

The first adjustment is that where the group capitalises interest expense or other financing costs as part of the cost of an asset, this amount should be included in the calculation of ANGIE at the point in time it is capitalised.

Secondly, amounts relating to capitalised interest that are written off to profit or loss which have been included in NGIE are to be excluded here. This is to ensure that amounts included in ANGIE in respect of capitalised interest at the time they are capitalised are not also included in ANGIE in subsequent periods.

## **Alternative calculation election**

The [interest allowance \(alternative calculation\) election](#) allows the group to calculate ANGIE on a different basis which is more closely aligned to the UK tax treatment of capitalised interest.

## **Examples**

### **Example 1: Interest capitalised in fixed asset**

JK plc prepares accounts to 31 March each year. It builds a factory for £40m as new premises for its widget manufacturing business. The company borrows money for this purpose and in doing so capitalises the interest of £4m incurred during the year ended 31 March 2018 during the construction of the factory. This borrowing cost increases the total value of the tangible fixed asset on the balance sheet to £44m. The factory is completed on 1 April 2018 and is subsequently depreciated over 10 years on a straight line basis.

JK plc has relevant interest expense amounts of £100m each year on other loans.

As the factory is classed as plant, property & equipment in the company's accounts, the interest is recognised in profit or loss through the depreciation charge.

The £4m of interest capitalised is not added into the calculation of the net group-interest expense for the year ended 31 March 2018 as this is not recognised in profit or loss in the period.

The amount of £400k in the depreciation charge of £4.4m for the year ended 31 March 2019 is also not included in the calculation of net group-interest expense for the year ended 31 March 2019. This ensures that the interest expense is not double counted as it will have been included in the depreciation charge for the period and hence added back the group's profit before tax in calculating group-EBITDA for the period. By excluding it from net group-interest expense, JK plc have avoided accounting for it twice. The total net group-interest expense remains as £100m.

When calculating the adjusted net group-interest expense, the £4m capitalised interest is included in the period in which it is capitalised. This therefore results in an adjusted net group-interest expense of £104m.

In summary:

	NGIE	ANGIE
Year ended 31 March 2018	£100m	£104m
Year ended 31 March 2019	£100m	£100m

The capitalised interest is included in ANGIE in the period in which it is capitalised.

### **Example 2: Interest capitalised in trading stock - development property**

YZ plc are a property development company. In year ended 31 March 2018 the company builds a new development property as part of its trading stock. The actual construction cost of the building is £100m, and the associated interest that is capitalised is £10m. In year 2, the company manages to sell the property for £150m.

YZ plc has relevant interest expense amounts of £100m each year on other loans.

**Year 1**

In the first year, YZ plc capitalises the interest of £10m. As a result this amount is not reflected in the group's profit or loss for the period and hence is not included in calculating the NGIE.

The £10m is capitalised in the period and is therefore included in the ANGIE for the period.

**Year 2**

In the second year, YZ plc sells the property. The £10m is recognised in profit or loss as part of the cost of sale. As the £10m now relates to the writing off of an asset, the £10m is to be included in the NGIE because it is not a relevant asset. This ensures that this interest cost is excluded from the calculation of group-EBITDA. In this instance it is not duplicated in the depreciation charge as part of group-EBITDA.

In summary:

	NGIE	ANGIE
Year ended 31 March 2018	£100m	£110m
Year ended 31 March 2019	£110m	£100m

# CFM95980 Interest restriction: Group-interest: ANGIE: Equity-accounted instruments

## TIOPA10/S413(3)(c), S413(4)(c), S413(6)

The calculation of [net group-interest expense](#) is based on the amounts recognised as [items of profit or loss](#). In the majority of cases this is therefore aligned with the calculation of taxable profits. However, there are two categories of loans and derivatives where the tax treatment includes amounts recognised directly in equity. [Adjusted net group-interest expense](#) is therefore adjusted to include these amounts.

The two categories of instrument are:

- Loan relationships and derivative contracts issued in an accounting period commencing before 1 January 2016, such that they would continue to fall within CTA09/S321 and S605. Although those provisions have been repealed, they continue to have effect in respect of existing instruments under F(No.2)A15/Sch7/Para106.
- Regulatory capital securities issued by banks and insurers under the Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209) for which equivalent treatment is provided for under regulation 3A.

# CFM95990 Interest restriction: Group-interest: ANGIE: Debt restructuring in insolvency

## TIOPA10/S413(3)(d), S413(4)(d)

The calculation of [net group-interest expense](#) is based on the amounts recognised as {items of profit or loss}. In cases where a company undertakes a debt restructuring exercise, there could be significant amounts recognised in the accounting profit or loss but excluded from computations for [corporation tax](#).

[Adjusted net group-interest expense](#) is therefore adjusted to exclude credits not brought into account following insolvency under CTA09/S322 or S323A, or would be so excluded if the company was within the charge to corporation tax.

### Example

ABC plc is the parent of a group under financial distress and there is material risk of it becoming insolvent in the near future. The creditors of the company agree to release £100m of debt as part of a debt restructuring exercise to rescue to the group. As a result, the group's financial statements show a credit of £100m in its income statement for the period.

The credit of £100m is included in net group-interest expense (and hence added back in the calculation of [group-EBITDA](#) for the period).

The credit of £100m is excluded from the calculation of adjusted net group-interest expense by way of an upward adjustment.

## **CFM96000 Interest restriction: Group-interest: ANGIE: Preference shares**

### **TIOPA10/S411(1)(d), S411(2)(c), S413(4)(e)**

Preference shares can be structured so as to be very similar to a loan. In many cases the preference shares will be accounted for as a financial asset and financial liability in the holder and issuer respectively. These instruments attract a particular accounting treatment given that these amounts are economically equivalent to loans, but legally in the form of shares.

### **Issuer: Preference shares accounted for as a financial liability**

The amounts recognised in the group's financial statements in respect of dividends payable in respect of preference shares accounted for as a financial asset is dealt with as follows:

- They are included in the calculation of [net group-interest expense](#), and as such are removed from the group's profit before tax for the period in calculating [group-EBITDA](#).
- There is an adjustment made in the calculation of [adjusted net-group interest expense](#), and they are therefore removed from this amount.
- As a result they are also not included in the amount of [qualifying net group-interest expense](#).

As a result, the accrual of dividends due under such preference shares will have no impact on the group's adjusted net-group expense, qualifying net group-interest expense or group-EBITDA for the period.

### **Holder: Preference shares accounted for as a financial asset**

The amounts recognised in the group's financial statements in respect of dividends receivable from preference shares accounted for as a financial asset is dealt with as follows:

- They are included in the calculation of net group-interest expense, and as such are removed from the group's profit before tax for the period in calculating [group-EBITDA](#).



- There is no adjustment made in the calculation of adjusted net-group interest expense, and they are therefore included in this amount for the period.
- Likewise they are included in the amount of qualifying net group-interest expense for the period.

As a result, income arising from such preference shares will reduce the group's adjusted net-group expense and qualifying net group-interest expense for the period. It does not impact on the group-EBITDA for the period.

# **CFM96010 Interest restriction: Group-Interest: Qualifying net group-interest expense (QNGIE): Contents**

[CFM96020: Group-Interest: Qualifying net group-interest expense: Overview](#)

[CFM96030: Group-Interest: Qualifying net group-interest expense: Related party debt](#)

[CFM96040: Group-Interest: Qualifying net group-interest expense: Results dependency securities](#)

[CFM96050: Group-Interest: Qualifying net group-interest expense: Equity notes](#)

# CFM96020 Interest restriction: Group-interest: Qualifying net group-interest expense: Overview

## TIOPA10/S414

The qualifying net group-interest expense of a [worldwide group](#) for a [period of account](#) is used as the numerator to calculate the [group ratio percentage](#) of the group ratio method. It is also the absolute limit on the [basic interest allowance](#) through the operation of the [group ratio debt cap](#) as part of the group ratio method.

- The qualifying net group-interest expense is based on the [adjusted net group-interest expense](#) of the group for the period, decreased by downward adjustments. This is to exclude certain relevant expense amounts that would otherwise be included.

The qualifying net group-interest expense cannot be negative. Where the calculation produces a negative result, the qualifying net group-interest expense of the group for the period is nil.

## Specific exclusions

The downward adjustments operate to exclude amounts in respect of a relevant expense amount that relates to:

- [related party debt](#)
- [results-dependent securities](#)
- [equity notes](#)

## Elections

The calculation of qualifying net group-interest expense can be modified through the operation of the following elections:

- [Alternative calculation](#)
- [Non-consolidated investment](#)
- [Consolidated partnerships](#)

## **CFM96030 Interest restriction: Group-interest: QNGIE: Related party debt**

### **TIOPA10/S414(3)(a), S414(5), S415(1)-(3)**

In determining the amount of interest and other financing costs that qualify to be included in [qualifying net group-interest expense](#) certain amounts are excluded. In particular, amounts are excluded where the loans or other financial liabilities owed to a [related party](#).

Where the loan or other financial liability is owed to a related party for only part of the period of account, then only the amounts attributable to that part of the period will be restricted. This applies in particular where:

- A creditor becomes or ceases to be a related party during the period
- A related party acquires or disposes of a debt during the period.

Although, in general, a debt that subject to a guarantee, indemnity or other form of financial assistance from a related party will be a treated as related party debt, this is subject to a number of exclusions. So a debt will not be regarded as related party debt for the purposes of the group ratio method where the financial assistance is:

- existed before 1 April 2017,
- provided by another member of the group,
- simply pledges shares or loans in the group, or
- is a performance guarantee.

## **CFM96040 Interest restriction: Group-interest: QNGIE: Results dependent securities**

### **TIOPA10/S414(3)(b), S415(4)-(6),(8)**

In determining the amount of interest and other financing costs that qualify to be included in [qualifying net group-interest expense](#) certain amounts are excluded. In particular, amounts are excluded where they related to securities issued by an entity where the payments made under the instrument depend on the results of the entity's business or the business of any other entity in the group.

Note that a purposive approach should be adopted in applying the legislation in line with the [distribution rules](#). It is aimed at what are really equity risk returns dressed up as interest and should not be applied blindly.

However, this exclusion does not apply to:

- Securities where the payments are inversely correlated to the performance of an entity's business.
- Securities in respect of an [alternative financing arrangement](#).
- Regulatory capital securities issued by banks and insurers under the Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209).
- Securities issued by securitisation vehicles under the [permanent regime](#) (under S.I. 2006/3296) or insurance securitisation companies (under S.I. 2007/3402).

There is no general exclusion for amounts paid to another company within the charge to Corporation Tax (unlike the [distribution rules](#)).

## **CFM96050 Interest restriction: Group-interest: QNGIE: Equity notes**

### **TIOPA10/S414(3)(c), S415(7)-(8)**

In determining the amount of interest and other financing costs that qualify to be included in [qualifying net group-interest expense](#) certain amounts are excluded. In particular, amounts are excluded where they related to an equity notes as defined under CTA10/S1016.

In particular a security is an equity note under where the instrument is:

- perpetual, such that there is no particular date by which it can be required to be redeemed,
- long-dated, such that the latest date on which it can be required to be redeemed is after 50 years from with the date of issue of the security.

Loans that are repayable on notice by the lender (known as demand loans) are not regarded as equity note securities. This is because they contain terms capable of giving rise to a particular date by which they are to be repaid.

This exclusion does not apply to regulatory capital securities issued by banks and insurers under the Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209)

# **CFM96060 Interest restriction: Group-interest: Derivative contracts: Contents**

[CFM96070: Group-Interest: Derivative contracts: Overview](#)

[CFM96080: Group-Interest: Derivative contracts: Application of the Disregard Rules](#)

[CFM96090: Group-Interest: Derivative contracts: Examples](#)

# CFM96070 Interest restriction: Group-interest: Derivative contracts: Overview

## Relevant derivative contracts

### TIOPA10/S412(2)

[Relevant income and relevant expense amounts](#) includes profits and losses from relevant derivative contracts. These relevant derivative contracts are [derivative contracts](#) whose [underlying subject matter](#) consists only of one or more of the following:

- interest rates
- an index determined by reference to income or retail prices
- currency
- loan relationship asset or liability
- any other subject matter that is subordinate in relation to the others specified or of small value in comparison with the whole.

Examples of relevant derivative contracts would typically include interest rate swaps, cross currency swaps, currency forwards, RPI swaps and credit default swaps.

Note that amounts of exchange gains and losses, impairment losses and amounts in respect of non-finance related derivatives are excluded from being relevant income and relevant expense matters.

## Non-finance related derivatives

### TIOPA10/S411(1)(e),(2)(d)

It is possible that groups will use relevant derivative contracts in a way that is totally unrelated to the financing structure. As a result, relevant income and relevant expense amounts will not include amounts from relevant derivative contracts where:

- the derivative hedges risks arising in the ordinary course of a trade (other than risks arising in the ordinary course of a financial trade), and
- the derivative was entered into wholly for reasons unrelated to the capital structure of the worldwide group, or any member of the worldwide group.



## Example

- TradeCo enters into a currency forward to hedge its costs of buying stock which are priced in USD. The contracted amounts under the forward do not relate to the company or the group's borrowings. Although the currency forward is a relevant contract (being a contract over currency), amounts arising from the contract are excluded from net group-interest expense. Instead all amounts on the contract recognised as items of profit or loss in the group's financial statements are included in [group-EBITDA](#).

## Application of the Disregard Regulations

In calculating the amounts of [net group-interest expense](#) and [group-EBITDA](#) any amounts of fair value movements arising on derivative contracts that have a hedging function are removed. Instead the amounts from those derivative contracts should be recognised in line with the hedged item. This is achieved through the [application of the Disregard Regulations](#) (SI2004/3256) to adjust the amounts recognised in the group's financial statements.

# CFM96080 Interest restriction: Group-interest: Derivative contracts: Application of the Disregard Regulations

## TIOPA10/S420-S421

In calculating the amounts of [group-interest](#) and [group-EBITDA](#) any amounts of fair value movements arising on derivative contracts that have a hedging function are to be removed. Instead, the amounts from those derivative contracts should be recognised in line with the hedged item.

So in particular, for the purposes of calculating these amounts:

- Excluded derivative contract amounts are to be left out of the group-EBITDA calculation. These are the amounts recognised in the group's financial statements in respect of derivative contracts that would be excluded under regulations 7, 8 and 9 of the [Disregard Regulations](#) (SI2004/3256).
- Replacement derivative contract amounts are to be included in the group-EBITDA calculation. These are the amounts that would be brought into account in respect of those derivative contract under regulations 9 and 10 of the Disregard Regulations.

In applying regulations 7, 8, 9 and 10 of the Disregard Regulations the following assumptions are made:

- All members of the group are within the charge to corporation tax.
- Elections under regulation 6A of the Disregard Regulations have effect in relation to each derivative contract of each member of the group
- Paragraph (5) of regulation 7 of the Disregard Regulations has no effect.
- Where a derivative contract taken out by one group company is hedging a risk arising in another group company, the derivative and the hedged item are treated as being in the company that has taken out the derivative.
- The financial statements of the company holding the derivative deal with the derivative contract and the hedged item in the same way as they are dealt with in the group's financial statements.

# **CFM96090 Interest restriction: Group-interest: Derivative contracts: Examples**

## **TIOPA10/S420-S421**

The next set of pages go through the following examples:

[CFM96100: Group-Interest: Derivative contracts: Example 1](#) (Designated cash flow hedge)

[CFM96110: Group-Interest: Derivative contracts: Example 2](#) (Designated fair value hedge)

[CFM96120: Group-Interest: Derivative contracts: Example 3](#) (Undesignated cash flow hedge)

## CFM96100 Interest restriction: Group-interest: Derivative contracts: Example 1 (Designated cash flow hedge)

MN plc is the ultimate parent of worldwide group.

MN plc takes out an interest rate swap to hedge the cash flows on a floating rate bank loan. The swap is designated as a cash flow hedge in the group accounts.

Consolidated financial statements: Interest and other financing costs:

Interest on bank loan	£10m
Accrual of periodic payments on swap (transfer from Cash Flow Hedging Reserve)	£4m
Fair value movements on swap - hedge ineffectiveness	£(0.5)m
	£13.5m

The application of the Disregard Regulation to the group financial statements would be as follows:

- Regulation 9 would apply as there is an interest rate contract that is hedging risks arising in respect of the interest cost on the bank loan (the hedged item) and the fair value profits and losses in respect of the hedged item are not recognised in the group accounts.
- As a result, all of the profits and losses on the swap are disregarded for the period. Instead, the amounts are brought into account on an 'appropriate accruals basis' which is likely to follow the accrual of the periodic payments made under the swap.
- The group will therefore have a [net group-interest expense](#) of £14m for the period. This is calculated by excluding the hedge ineffectiveness in the income statement.
- Note that the group's financial statements are assumed to have been prepared on the basis of the application of the Disregard Regulations for both [group-interest](#) and [group-EBITDA](#). As a result, the hedge ineffectiveness is completely disregarded - it does not appear in any of the group-interest or group-EBITDA amounts.

# CFM96110 Interest restriction: Group-interest: Derivative contracts: Example 2 (Designated fair value hedge)

## TIOPA10/S420-S421

MN plc is the ultimate parent of worldwide group.

MN plc takes out an interest rate swap to hedge the fair value risks on a fixed rate bond. The swap is designated as a fair value hedge in the group accounts.

Consolidated financial statements: Interest and other financing costs:

Interest on bond	£14m
Accrual of periodic payments on swap	£(4)m
Fair value movements on swap	£(3)m
Fair value adjustment on the bond	£3.5m
	£10.5m

The application of the Disregard Regulation to the group financial statements would be as follows:

- Regulation 9 would not apply. There is an interest rate contract that is hedging risks arising in respect of the interest cost on the bond (the hedged item). However, the fair value profits and losses in respect of the hedged item are recognised in the group accounts.
- The group will therefore have a [net group-interest expense](#) of £10.5m for the period.

## CFM96120 Interest restriction: Group-interest: Derivative contracts: Example 3 (Undesignated cash flow hedge)

### TIOPA10/S420-S421

MN plc is the ultimate parent of worldwide group.

MN plc takes out an interest rate swap to hedge the cash flows on a floating rate bank loan. The swap is not designated as a hedge in the group accounts.

Consolidated financial statements: Interest and other financing costs:

Interest on bank loan	£10m
Accrual of periodic payments on swap	£4m
Fair value movements on swap	£(3)m
	£11m

The application of the Disregard Regulation to the group financial statements would be as follows:

- Regulation 9 would apply as there is an interest rate contract that is hedging risks arising in respect of the interest cost on the bank loan (the hedged item) and the fair value profits and losses in respect of the hedged item are not recognised in the group accounts.
- As a result, all of the profits and losses on the swap are disregarded for the period. Instead, the amounts are brought into account on an 'appropriate accruals basis' which is likely to follow the accrual of the periodic payments made under the swap.
- The group will therefore have a [net group-interest expense](#) of £14m for the period. This is calculated by excluding the 'clean' fair value movement in the swap of £3m for the period.
- Note that the group's financial statements are assumed to have been prepared on the basis of the application of the Disregard Regulations for both [group-interest](#) and [group-EBITDA](#). As a result, the clean fair value

movement is completely disregarded - it does not appear in any of the group-interest or group-EBITDA amounts.

### **Undesignated fair value hedges**

Undesignated fair value hedges are treated in a similar way to undesignated cash flow hedges.

# CFM96200 Interest restriction: Related parties: Contents

[CFM96210 Interest restriction: Related parties: Overview](#)

[CFM96220 Interest restriction: Related parties: General rule](#)

[CFM96230 Interest restriction: Related parties: Meaning of '25% investment'](#)

[CFM96240 Interest restriction: Related parties: 25% investment - attribution of rights and interests: Connected persons](#)

[CFM96250 Interest restriction: Related parties: 25% investment - attribution of rights and interests: Persons acting together](#)

[CFM96260 Interest restriction: Related parties: 25% investment - attribution of rights and interests: Qualifying arrangement](#)

[CFM96270 Interest restriction: Related parties: Liabilities guaranteed by a related party](#)

[CFM96275 Interest restriction: Related parties: Liabilities where a related party indirectly stands as a creditor](#)

[CFM96280 Interest restriction: Related parties: Holdings of debt and equity in the same proportions](#)

[CFM96290 Interest restriction: Related parties: Where unrelated parties hold at least 50% of the same debt](#)

[CFM96300 Interest restriction: Related parties: Where unrelated parties hold at least 50% of debt with the same rights: Examples](#)

[CFM96310 Interest restriction: Related parties: Debt restructuring](#)

[CFM96320 Interest restriction: Related parties: Ordinary independent financing arrangements by banks and others](#)

[CFM96330 Interest restriction: Related parties: Loans made by relevant public bodies](#)

[CFM96340 Interest restriction: Related parties: Finance leases granted before 1 April 2017](#)



# CFM96210 Interest restriction: Related parties: Overview

## TIOPA10/S462-472

Some groups and businesses naturally have a higher level of indebtedness than others. The Corporate Interest Restriction rules permit groups to obtain relief in line with genuine third party debt in two ways:

- The [group ratio method](#) allows a higher amount of [tax-interest expense](#) to be deducted if the group ratio percentage is higher than 30%. The percentage is based on the ratio of [qualifying net group-interest expense](#) to [group-EBITDA](#) for the group based on its financial statements.
- The [public infrastructure rules](#) allow qualifying infrastructure companies to exclude amounts of [tax-interest expense](#) and [tax-EBITDA](#) from the rules.
- Amounts due on related party debt are restricted from being taken into account in calculating the qualifying net group-interest expense, which is used in the group ratio, and the amounts of tax-interest expense to be excluded under the infrastructure rules.

## General rule

The [general rule](#) is that a person A will be related to person B on a particular day where any one of the following conditions is met:

- The [consolidated condition](#)
- The [participation condition](#)
- The [25% investment condition](#)

## Specific inclusions

There are three specific rules which deem loans, and other financial liabilities, as made between related parties:

- [liabilities guaranteed by a related party](#)
- [liabilities where a related party indirectly stands as a creditor](#)
- [liabilities held in the same proportion as equity](#)

## Specific exclusions

- However the following cases will not be regarded as being made between related parties:
- [loans where more than 50% is held by unrelated parties](#)
- [loans following a corporate rescue](#)
- [ordinary independent financing arrangements by banks and others](#)
- [loans made by relevant public bodies](#)
- [finance leases granted before 1 April 2017](#)

## Priority of specific rules

TIOPA10/S462 includes a priority rule which provide that the specific exclusions listed above take priority over the specific inclusions. However, this does not mean that an exclusion rule will always switch off an inclusion rule, as illustrated in Example 2 below.

### Example 1

XY PLC has ten investors with 10% interest each. The company has issued debt of £100m, of which each investor holds £1m in proportion to their shareholdings. The remainder of the £90m debt is held by third party lenders. The debt held by the shareholders carries exactly the same rights as the debt held by the third party lenders.

In this case all of the debt is treated as unrelated debt. The exclusion for loans where more than 50% is held by unrelated parties has priority over the inclusion for loans held in the same proportion as equity.

### Example 2

A Ltd borrows £20m from B Ltd and £80m from X Ltd on the same terms. C Ltd provides a guarantee for all of A Ltd's liability. B Ltd and C Ltd are both related parties of A Ltd under the general participation condition whereas X Ltd is not related to A Ltd under any of the general rules.

Section 466 (liabilities guaranteed by a related party) and section 468 (loans where at least 50% is held by unrelated parties) are both in point. Under the priority rule, section 468 could potentially take priority over section 466 so that the loan from B Ltd to A Ltd would be treated as if it were not between related parties.

However, the first step in applying these rules is to apply section 466 to the loan from X Ltd to A Ltd. Because of the guarantee provided by C Ltd this is treated as if it were a related party loan for the purpose of TIOPA10/PART10. In particular, this loan is treated as if between related parties when applying section 468. So for the purpose of section 468, it is not the case that at least 50% of the debt is held by unrelated parties, and the loan from B Ltd is not excluded from being treated as a related party loan.

**Note**

Both the calculation of QNGIE (TIOPA10/S415) and public infrastructure rules (TIOPA10/S438) can disapply TIOPA10/S466 in certain situations. Where this is the case, section 468 would apply and neither B Ltd nor X Ltd would be treated as related parties of A Ltd.

# CFM96220 Interest restriction: Related parties: General rule

## TIOPA10/S463

The general rule is that A and B will be related parties on a particular day where any one of three conditions is satisfied:

### The consolidation condition

A and B will meet this condition if:

- Their financial results for a period are required to be comprised in group accounts.
- Their financial results for the period would be required to be comprised in group accounts, but for the application of an exemption.
- Their financial results for a period are actually comprised in group accounts.

Group accounts means accounts prepared under s399 of the Companies Act 2006, or any corresponding provision of the law of a territory outside the United Kingdom.

### The participation condition

A and B will meet this condition if, within the period of six months beginning or ending with that day, either of the below are met:

- Either A or B directly or indirectly [participates in the management, control or capital of the other](#).
- The same person or persons directly or indirectly participates in the management, control or capital of both A and B.

Whether a company participates in the management, control or capital of the other is determined in the same way as for transfer pricing.

Where either A or B is a securitisation company, they are not treated as related parties if this treatment only arises by virtue of the securitisation company being held by a trustee of a settlement with the other party being a settlor of that settlement.

**Example**

A Ltd has one wholly owned subsidiary (B Ltd) which it disposes of to an unrelated party on 1 April 2017. The participation condition will be met up to this date because A Ltd directly controls B Ltd. A Ltd and B Ltd will continue to be related parties up until 1 October 2017, however, because this is six months from the day the condition was last met.

**The 25% investment condition**

A and B will meet this condition on any day where either A or B has a [25% investment](#) in the other or a third person has a 25% investment in both A and B.

# CFM96230 Interest restriction: Related parties: Meaning of 25% investment

## TIOPA10/S464

The 25% investment condition is one of the three conditions in the general rule of a [related party](#).

A person (P) will have a 25% investment in another person (C) if any of the following are met:

- P possesses, or is entitled to acquire, 25% or more of the voting power in C.
- In the event of a disposal of the whole of the equity in C, P would receive 25% or more of the proceeds.
- In the event that the income in respect of the equity in C were distributed among the equity holders in C, P would receive 25% or more of the amount so distributed.
- In the event of a winding-up of C, or in any other circumstances, P would receive 25% or more of C's assets which would then be available for distribution among the equity holders in C in respect of the equity in C.

It should be noted that the three tests of economic rights concern the rights of the investor in respect of their equity interests in C.

## Meaning of equity

References to equity in C are to:

- shares in C other than restricted preference shares
- loans to C other than normal commercial loans.

Shares include stock and any other interests of members in C. So, for example, the 25% investment test can be met with a company that does not have share capital by considering all of the interests of the members in the company.

Where C is not a company, or does not have share capital these definitions have effect with the necessary modifications.

## Indirect rights

References to a person receiving any proceeds, amount or assets includes both the direct or indirect receipt by that person and the direct or indirect application of them for that person's benefit. It does not matter whether the receipt or application is at the time of the disposal, distribution, winding-up or other circumstances, or at a later time. However, this does not apply to rights arising purely as a result of a person being a party to a normal commercial loan.

Where a company A has rights over any proceeds, amount or assets and another person (B) holds an equity in A, then B is treated as having indirect rights to the proceeds, amount or assets that arise for the benefit of A in proportion to B's equity interest in A.

Any reference to proceeds, amount or assets of a person who is in a partnership includes a reference to the person's share of the proceeds, amount or assets of that partnership determined by apportioning between the partners on a just and reasonable basis.

## Attribution of interests and rights

The definition of 25% investment looks at the level of investment P has in an entity. In considering the above tests, P will be considered have certain attributed rights and interests in the following cases:

- [Connected persons](#)
- [Persons acting together](#)
- [Qualifying arrangements](#)

# **CFM96240 Interest restriction: Related parties: 25% investment - attribution of rights and interests: Connected persons**

## **TIOPA10/465(1)-(2)**

The definition of [25% investment](#) looks at the level of investment P has in an entity. This does not just include rights and interests held solely by P, however, and also takes into account rights and interests held by certain other people which are attributed to P.

Connection is one of three ways in which rights and interests are attributed to P. Under this rule, P is taken to have all the rights and interests of:

1. Any person connected with P,
2. Any person who is a member of a partnership, or is connected with a person who is a member of a partnership, of which P is a member, or
3. Any person who is a member of a partnership, or is connected with a person who is a member of a partnership, of which a person connected with P is a member.

The meaning of connection is given by CTA10/S1122, with the exception that subsections (7) and (8) are dis-applied. Connected persons include, for example, spouses and their close relatives, close relatives (brother, sister, ancestor or linear descendent) and their spouses, and companies under common control.

A person is not regarded as connected with another person simply because a normal commercial loan has been made between them.

### **Example**

A Ltd and B Ltd are both controlled by the same person which means they are connected (section 465(1)(a)) and A Ltd will therefore be attributed the rights of B Ltd.

B Ltd is also in a partnership with Y Ltd. A Ltd will also be attributed the rights of Y Ltd (section 465(1)(c)) because it is a member of a partnership of which a person connected with A Ltd (B Ltd) is also a member.

A Ltd would also be attributed the rights of any person connected with Y Ltd, for example its wholly owned subsidiary.



# **CFM96250 Interest restriction: Related parties: 25% investment - attribution of rights and interests: Persons acting together**

## **TIOPA10/465(3)-(6)**

The definition of [25% investment](#) looks at the level of investment P has in an entity. This does not just include rights and interests held solely by P, however, and also takes into account rights and interests held by certain other people which are attributed to P.

Acting together is one of three ways in which rights and interests are attributed to P. So in determining the level of investment P has in another person (U), P is taken to have all the rights and interests of a third person (T) with whom P acts together in relation to U.

### **Acting together**

P 'acts together' with T in relation to U if any of the following are satisfied:

- For the purpose of influencing the conduct of U's affairs, P is able to ensure T acts in accordance with their wishes (or vice versa), or T can reasonably be expected to act, or typically acts, in accordance with P's wishes (or vice versa).
- P and T are party to an arrangement that it is reasonable to conclude is designed to affect the value of any of T's equity in U.
- The same person manages some or all of the equity in U possessed by P and T.

However, P is not treated as acting together with T if the managing person does so as the operator of different collective investment schemes, and if the management of the schemes is not coordinated for the purpose of influencing U. The relevant terms for this exemption are given in Part 17 of the Financial Services and Markets Act (FSMA), 2000.

### **Example**

P has a 20% investment in U and T has a 10% investment in U. P and T are neither related to each other nor U (for example, both fail the 25% investment condition).

However, T is legally bound to act in accordance with P's instructions, meaning P is able to secure that T acts in accordance with their wishes. P and T are therefore acting together under s465(4)(a)(i), and P will therefore be attributed the rights of T.

# **CFM96260 Interest restriction: Related parties: 25% investment - attribution of rights and interests: Qualifying arrangement**

## **TIOPA10/465(7)-(10)**

The definition of [25% investment](#) looks at the level of investment P has in an entity. This does not just include rights and interests held solely by P, however, and also takes into account rights and interests held by certain other people which are attributed to P.

A qualifying arrangement is one of three ways in which rights and interests are attributed to P. Under this rule, P is also taken to have all the rights and interests of one or more third parties with whom P has entered into a qualifying arrangement in relation to U.

### **Qualifying arrangement**

P will have a qualifying arrangement with one or more third parties if they are party to an arrangement concerning U as a result of which, by reference to shares are held (or to be held) by one or more of them in U, they can reasonably be expected to act together to either:

- Exert greater influence in relation to U than any one of them would be able to exert if acting alone, or
- Achieve an outcome in relation to U that, if attempted by any one of them acting alone, would be significantly more difficult to achieve.

The reference to shares in U includes shares that may be held as a result of the exercise of any right or power, and includes rights or interests in U that are of a similar character to shares.

'Arrangement' is taken to mean any agreement, understanding, scheme, transaction, or series of transactions.

### **Example**

Five investors come together to take control of a company, with each investor taking a stake below 25%, splitting their investments between debt and equity in differing proportions. Each of the five investors has entered into a qualifying arrangement however because they can reasonably be expected to act

together so as to exert greater influence over the company than any of them could have exerted acting alone.

Each investor is therefore taken to have all the rights and interests of the other investors.

# CFM96270 Interest restriction: Related parties: Liabilities guaranteed by a related party

## TIOPA10/S466

Where an entity borrows from a third party, it may still be able borrow excessively - more than it could on its own - by obtaining a guarantee from a related party. In determining whether a loan or other financial liability is treated as being with a [related party](#), consideration must therefore be given to any guarantees, indemnities or other financial assistance provided to the lender in respect of the liability by a related party.

In particular, the rules treat a loan or other financial liability of an entity (D) as if were with a related party where a related party to D (G) provides a guarantee, indemnity or other financial assistance for the debt owed by D.

### Example

A third party (C) lends £100m to a company (D). A company (G) which is related to D provides a guarantee in respect of the liability.

Without the guarantee, the loan between C and D would not be between related parties. However, providing a guarantee will mean that C and D will now be treated as if they were related parties in respect of the £100m loan relationship.

## Exclusions

There are a number of specific exclusions to this rule in the context of the group ratio method and the public infrastructure rules.

### Group ratio method

This rule is turned off by section 415 in the calculation of [qualifying net group-interest expense](#) for the group ratio method where the financial assistance:

- existed before 1 April 2017,
- is provided by another member of the group,

- simply pledges shares in the ultimate parent or loans to a member of the group, or
- is a performance guarantee.

### **Public infrastructure**

[Section 438](#) sets out the amounts of interest, and similar financial expenses, which are excluded from tax-interest expense for a public infrastructure company. Section 438(3) provides that this exemption cannot apply where the creditor is a related party but disapplies section 466 in this specific instance. This means that the exemption can potentially apply to interest, or similar financial expenses, paid to a creditor who is only a related party by virtue of section 466.

# CFM96275 Interest restriction: Related parties: Liabilities where a related party indirectly stands as a creditor

## TIOPA10/S466

The rules also ensure that the [related party](#) provisions cannot be sidestepped by routing loans through a third party, where in reality a related party stands in the position of creditor.

In particular, where an entity (D) has a loan or other liability and a related party (G) indirectly stands in the position of creditor in respect of that liability, then the rules treat the liability as if it were with a related party.

### Example

A company (D) is financed from a related party (G) through a back-to-back lending arrangement by which G lends £200m to a third party bank (C) which then on-lends £200m to a company (D).

At first glance, the loan between C and D is not made between related parties. However, the rules will take account of the fact that a related party (G) indirectly stands in the position of creditor in respect of the loan by virtue of a series of loan relationships. This means C and D will be treated as related parties in respect of the £200m loan relationship.

# CFM96280 Interest restriction: Related parties: Holdings of debt and equity in the same proportions

## TIOPA10/S467

The [related party](#) rules exist to limit the scope for a related party outside the group using loans and other instruments in place of equity to inflate the [interest capacity](#) of the group through the [group ratio method](#) or the [public infrastructure rules](#).

A specific risk exists where shareholders in a company lend money on the exact (or very similar) terms and in proportion to their shareholdings in the company. Often such loans are referred to as 'shareholder loans' or 'equity loans'. In such cases loans effectively form part of the equity in the company.

So where the amounts each lender has lent to a company U stand in substantially the same proportion as their shares or voting power, and the lenders together have a 25% investment in U, the loans are treated as made between related parties.

In addition, a lender might transfer some, or all, of the rights under the loan to another person. Where this is the case, that person (the transferee) is treated as a related party of U in relation to the loan, even where they have no shares or voting power in U.



# CFM96290 Interest restriction: Related parties: Where unrelated parties hold at least 50% of the same debt

## TIOPA10/S468

The [related party](#) rules exist to limit the scope for a related party outside the group using loans and other instruments in place of equity to inflate the [interest capacity](#) of the group through the [group ratio method](#) or the [public infrastructure rules](#).

However, there are situations where debt is held by a related party for commercial reasons and on the same terms as debt issued to third parties. The fact that third parties hold the same class of debt provides assurance that the entity is not borrowing excessively.

The rules therefore provide that debt owed to a related party is not treated as such where at least 50% of the debt is held by unrelated parties. The key test here is that the debt held by the related parties must have been issued at the same time and must confer the same rights as the debt held by the unrelated parties.

### Same rights

Creditors are not regarded as having the same rights if:

- The terms on which the money is lent make different provisions in relation to different persons or can have a different effect to different persons.
- Arrangements are in place that mean the rights of some persons in relation to any of the debt differ from the rights of others.
- Circumstances exist such that the rights of some persons cannot reasonably be regarded as being, in substance, the same as rights held by other persons in respect of any of the debt.

# CFM96300 Interest restriction: Related parties: Where unrelated parties hold at least 50% of debt with the same rights: Examples

## Example One

A group is ultimately owned by an individual (A), who makes a £100m loan to the group which accrues interest of £10m per annum. Under the basic rule, the £10m interest is excluded from the group's interest expense because it is from a related party by virtue of the [participation condition](#).

At the same time, the group borrows £100m from an unrelated party (B) which also accrues interest of £10m per annum. The rights conferred by both loan relationships are the identical. The relevant conditions are therefore met and the £10m interest paid to A can be treated as paid to an unrelated party and included in qualifying net group interest expense (along with the £10m interest paid to B).

## Example Two

The facts are the same as example one except the loan to B only accrues interest of £8m per year.

The difference in interest due under the two loan relationships means that the terms and conditions on which the money is lent are not the same. The loan from A is therefore still treated as paid to a related party, and will be excluded from qualifying net group interest expense.

## Example Three

The facts are the same as example one except B enters into a side agreement with the debtor which prioritises the debt from B above the debt from A in the event of a winding up of the debtor.

The side agreement means that arrangements are in place to give different creditors different rights. The loan from A is therefore still treated as paid to a related party and excluded from qualifying net group interest expense accordingly.

## Example Four

The facts are the same as example one except the loan agreement states that creditors without shares in the group are prioritised over creditors with share

capital in the event of a winding up. Similar to example three, the rights are not the same between A and B, so the provision cannot apply, and A will remain as a related party in respect of the loan relationship.

### **Example Five**

The facts are the same as example one except the loan from the owner is made to the ultimate parent, whereas the third party loan is made to an intermediate holding company. Although the terms of the loans are identical in terms of commitments, the different debtor means that the loan to the related party is structurally subordinated to the third party loan.

As such, the position of the creditors is not the same. The loan from A is therefore still treated as paid to a related party and excluded accordingly.

# CFM96310 Interest restriction: Related parties: Debt restructuring

## TIOPA10/S469

When a company encounters trading difficulties, it might be unable to service any debtor loan relationships it is party to, and the creditor may release all, or part of, the debt as a result. This might precipitate the creditor becoming a [related party](#) of the debtor where they were previously unrelated.

This will typically be the case, for example, where the creditor agrees to release the debt in consideration for shares in the company, with the expectation that the shares will increase in value in the long term and they will be able to recoup their loss.

If only part of the debt was released, any debt still owed to the creditor would be payable to a related party which could reduce the company's [interest capacity](#) at a time when it is in financial distress. The rules therefore treat the debtor and creditor as not being related parties where they only became related following a relevant release of debt.

### Relevant release of debt

The rule applies in respect of a relevant release of debt which is where:

- D (or a related party of D) has a liability to pay an amount under a debtor relationship which is released under the arrangements, and
- Immediately before the release, it would be reasonable to conclude that without it, there would be a material risk that D (or the related party) would be unable to pay its debts within the next 12 months.

### Example

C lends £10m to an unrelated party (D).

D experiences financial difficulties and C agrees to release half of the debt and convert it into equity. This results in D and C becoming related parties because C's equity stake means it now has a 25% investment in D (section 463).

D and C continue to be treated as unrelated in respect of the remaining loan amount because, immediately before the release, it was reasonable to

conclude there was a material risk that D would be unable to service the debt in the next 12 months.

# **CFM96320 Interest restriction: Related parties: Ordinary independent financing arrangements by banks and others**

## **TIOPA10/S470**

Where two entities are treated by the rules to be related (for example where the 25% investment threshold is met) any loan advanced between them will prima facie be treated as related party debt. This will typically give the correct result but there will be circumstances where the loan was made totally independent of the fact that the debtor and creditor are related. Where this is the case, the loan will have been advanced on normal commercial terms meaning the financing arrangements will not be designed to confer a tax benefit.

Section 470 caters for such situations by treating certain loans as not made between related parties. It can only apply where the creditor is not party to the loan, directly or indirectly, as a result of any of the circumstances which make the parties related.

This treatment only applies in respect of the loan which meets this criteria and, for all other purposes, debtor and creditor will remain related parties.

### **Example**

A Ltd acquires a 30% stake in Z Ltd through its investment business. A Ltd and Z Ltd are therefore related parties by virtue of section 463(7) because the 25% investment condition has been met.

Z Ltd requires additional finance to expand its business and funds this with a loan from B Ltd, a company in the same group as A Ltd which undertakes a lending business. Absent section 470, this loan would be treated as made between related parties because the rights held by A Ltd are attributed to B Ltd. However, because the investment business acts independently from the lending arm (and because the loan was advanced without knowledge of the existing connection), the loan is treated as not being between related parties.

# CFM96330 Interest restriction: Related parties: Loans made by relevant public bodies

## TIOPA10/S471

Some companies are wholly owned by relevant public bodies, meaning the public body is a related party of its subsidiary. Likewise there can be occasions where a public body has a significant stake in a company. Often such a company is significantly constrained in who it is permitted to borrow from. In such cases the loans made by the public body would, except for s471, fall into the [related party](#) provisions.

There is a specific rule which operates to disapply the related party provisions in these sorts of situations.

Where a relevant public body (B) lends money to a related party (P), B and P are not treated as related parties in respect of the loan, provided that the realising of a profit is only incidental to the making of the loan.

### **Example: Public body providing a loan to a subsidiary which is carrying out the objectives of the public body.**

A local authority has a subsidiary which provides rental accommodation to people within the local authority area (social housing). The local authority charges an arms-length commercial margin to its subsidiary on the interest on a loan it makes to its subsidiary.

Whether or not the profit on the loan is incidental to the making of the loan depends on the facts. In this case the local authority is a relevant public body as defined in TIOPA10/s491. The local authority does make a profit on the provision of the loan. However the main purpose of the local authority is to provide social housing for people within the local authority area. This is done through the subsidiary company. In these circumstances the profit on the loan is likely to be incidental to the making of the loan and therefore the related party provisions would not apply.

In other circumstances there can come a point where the profit making would constitute a purpose in its own right. This is likely to be the case, for example, where the public body is a public pension fund or sovereign wealth fund with a key objective of generating returns on funds invested.

## **CFM96340 Interest restriction: Related parties: Finance leases granted before 1 April 2017**

### **TIOPA10/S472**

There is a specific grandfathering provision which applies where an asset is leased by a person (A) to another (B) under a lease which is granted before 1 April 2017 and which is a finance lease.

Where this is the case, A and B are treated as if they were not [related parties](#) in relation to the lease.



# CFM96400 Interest restriction: Group-EBITDA: Contents

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# CFM96410 Interest restriction: Group-EBITDA: Definition of Group-EBITDA

## TIOPA/S416

Group-EBITDA is the denominator used in the calculation of the [group ratio percentage](#) as part of the [group ratio method](#). It is based on the group's earnings for the period before interest, taxation, depreciation and amortisation, as shown in the consolidated Group accounts for the parent entity of the worldwide group. It is important to note, however, there is a particular statutory definition of group-EBITDA, so it is not likely that this will exactly align to the figure calculated by businesses for their own reporting purposes.

Group-EBITDA is calculated as follows:

- The **profit before tax**, plus
- the [net group-interest expense](#), plus
- the [depreciation and amortisation adjustment](#).

These amounts are all based on the amounts recognised as [items of profit or loss in the financial statements](#) of the [worldwide group](#) for the period of account. Note that any of these amounts may be negative.

### **Profit before tax**

The group's **profit before tax** means the amounts recognised in the group financial statements for the period as items of profit or loss excluding any amounts of tax expense (or income).

### **Derivatives**

In calculating the group-EBITDA the [fair value movements on derivatives](#) that have a hedging function are 'disregarded'.

### **Research and Development Expenditure Credits**

In calculating the group-EBITDA, any amounts of R&D expenditure credits (RDECs) are ignored.

## Elections

The calculation of group-EBITDA can be modified through the operation of the following elections:

- [Alternative calculation](#)
- [Chargeable gains](#)
- [Non-consolidated investment](#)
- [Consolidated partnerships](#)

# CFM96430 Interest restriction: Group-EBITDA: Depreciation and amortisation adjustment

## TIOPA10/416(3)

In the calculation of [group-EBITDA](#) an adjustment is made to remove the effects of depreciation and amortisation on [relevant assets](#) from the [financial statements](#). This is referred to as the depreciation and amortisation adjustment and is the aggregate of three adjusting figures relating to:

- [Capital \(expenditure\) adjustment](#) which removes depreciation, amortisation and other amounts of capital expenditure in respect of a relevant asset.
- [Capital \(fair value movement\) adjustment](#) which removes fair value movements on the revaluation of a relevant asset.
- [Capital \(disposals\) adjustment](#) which recomputes amounts of profits or losses on disposal of a relevant asset on the assumption the asset was not depreciated, amortised or revalued.

# CFM96440 Interest restriction: Group-EBITDA: Capital (expenditure) adjustment

## TIOPA10/S417

The capital (expenditure) adjustment removes amounts of capital expenditure from calculating [group-EBITDA](#). It forms part of the overall [depreciation and amortisation adjustment](#) which is added back to profit before tax figure for the period.

The main component of the capital (expenditure) adjustment is the relevant capital expenditure. This comprises amounts of capital expenditure related to [relevant assets](#) that:

- Are written off in the period the capital expenditure is incurred;
- Are written off by way of depreciation, amortisation or impairment of the asset; or
- Are recognised in profit or loss by way of a provision for future costs.

In addition, the capital (expenditure) adjustment is reduced, or potentially made negative, as a result of:

- Relevant capital expenditure reversals, being amounts of relevant capital expenditure incurred (and written off) in a prior period but reversed in the relevant period; and
- Relevant capital income, being receipts of a capital nature relating to the asset. In particular, this would include amounts recognised in profit or loss in respect of {grants and contributions} received by the group that fund capital expenditure.

Adjustments are only made in respect of capital expenditure (and receipts related to that capital expenditure). This is based on established tax law, and aligns with capital expenditure that could be eligible for capital allowances and capital expenditure disallowed in the calculation of trading profits.

However, depreciation in respect of an asset held under a {finance lease} is included.

Relevant capital expenditure does not include amounts relating to profits or losses on disposal which are separately dealt with by the [capital \(disposals\) adjustment](#).

The references to capital expenditure includes amounts of interest and other financing amounts which have been capitalised in the carrying value of the asset in question.

# **CFM96450 Interest restriction: Group-EBITDA: Capital (fair value movement) adjustment**

## **TIOPA10/418**

The capital (fair value movement) adjustment removes revaluations and other fair value movements on [relevant assets](#) from calculating [group-EBITDA](#). It forms part of the overall [depreciation and amortisation adjustment](#) which is added back to profit before tax figure for the period.

The fair value capital adjustment is the sum of all relevant fair value movements.

A relevant fair value movement is where there is a change in carrying value of a relevant asset that is recognised in determining the group's profit or loss for the period. The adjustment amount is positive for revaluation losses and negative for revaluation gains, so these amounts reversed out.

This only includes amounts of a capital nature. Where the revaluations are of a revenue nature then these do not form part of the capital (fair value movement) adjustment.

# CFM96460 Interest restriction: Group-EBITDA: Capital (disposals) adjustment

## TIOPA10/419

The capital (disposals) adjustment replaces the amounts of profits or losses recognised on the disposal of [relevant assets](#) with a recomputed amount when calculating [group-EBITDA](#). It forms part of the overall [depreciation and amortisation adjustment](#) which is added back to profit before tax figure for the period.

The adjustment is calculated as  $A - B + C$  where

- (A) is the amount of losses on disposal for [relevant assets](#) recognised in the group's profit before tax
- (B) is the amount of profits on disposal for relevant assets recognised in the group's profit before tax
- (C) is the recalculated profit amounts.

The first part of the adjustment ( $A - B$ ) removes the amounts of profits and losses on disposal from the group's profit before tax in calculating group-EBITDA.

The second part of the adjustment ( $+ C$ ) includes, in their place, the recalculated profit amounts.

These amounts only include items of a capital nature. Where the disposals are of a revenue nature then they do not form part of the capital (disposals) adjustment.

### Recalculated profit amounts

This is the amount of profits on disposal of [relevant assets](#) calculated on the basis that any amounts written off or any revaluation adjustments are disregarded. As such, it calculates the profits on disposal on the assumption that the asset in question was not depreciated or amortised, and was not revalued or impaired.

The profit on disposal is calculated as the excess of the relevant proceeds over the relevant cost. This should be the actual proceeds from the disposal less the actual cost of acquiring the asset.



Where the asset is sold at a loss compared with the cost of the asset then no amount is included. This is because the loss effectively represents a further write-off of the original expenditure on the asset, and is therefore similar in nature to amounts of depreciation.

### **Group-EBITDA (Chargeable gains) election**

Note that the calculation of C is performed differently where a group makes a [chargeable gains election](#). This is to bring the calculation of C closer to the way the UK tax rules determine the amount of chargeable gains.

# CFM96470 Interest restriction: Group-EBITDA: Relevant assets

## TIOPA10/S417(5)

The amounts adjusted for as part of the [depreciation and amortisation adjustment](#) are those in respect of relevant assets. This is defined as:

- plant, property and equipment (PPE),
- investment property,
- intangible assets (including internally generated assets),
- goodwill (including internally generated goodwill),
- shares in a company,
- interests in an entity which entitle the holder to a share of profits.

The references above to PPE, investment property, intangible assets and goodwill take the meaning they do for accounting purposes.

# CFM96480 Interest restriction: Group-EBITDA: Example 1

PQ group acquired machinery for £10m in 2018, with the cost being amortised over five years.

## Year ended 31 December 2018

PQ group's financial statements show a depreciation charge of £2 million in respect of the asset. The [capital \(expenditure\) adjustment](#) in respect of the asset is therefore the £2 million. This amount is therefore added back to the profit before tax for the period.

## Year ended 31 December 2020

PQ group's financial statements show the asset at a net book value of £6 million at the start of the period. During the period the machine is sold for £7.5 million, giving a profit on disposal of £1.5 million.

[The capital \(disposals\) adjustment](#) will be (£1.5 million). This represents the removal of the profit on disposal recognised in the accounts. There is no recalculated profit amount because the proceeds of £7.5 million are less than the original cost of £10 million.

## CFM96490 Interest restriction: Group-EBITDA: Example 2

The RS group owns an investment property and this is revalued each period. This was acquired for £6m.

### Year ended 31 December 2018

At the start of the period the property is included in the group's financial statements at a value of £4 million.

During the period the group carried out a review of the property. They decide that due to deteriorating market conditions, the property should be revalued down to £2.5 million, an adjustment of £1.5m. A revaluation loss of £1.5m has been included in calculating the group's profit before tax for the period.

The [capital \(fair value movement\) adjustment](#) in respect of the property will be £1.5 million. This is the fair value movement for the year and is a positive adjustment so to remove the effect of the revaluation loss.

### Year ended 31 December 2019

During the period the market improves significantly and group disposes of the property for £7 million, recognising a profit on disposal of the asset of £4.5 million.

The [capital \(disposals\) adjustment](#) in respect of the property will be £(3.5) million. This comprises the sum of £(4.5) million to remove the actual profit on disposal recognised and £1 million recalculated profit on disposal.

The £1 million profit on disposal is calculated as the actual disposal proceeds recognised in the accounts of £7 million, less the value of the asset being sold of £6m (being the book value of the asset ignoring the previous revaluation movements on the asset).

## CFM96500 Interest restriction: Group-EBITDA: Derivative contracts

In calculating the amounts of [net group-interest expense](#) and [group-EBITDA](#) any amounts of fair value movements arising on derivative contracts that have a hedging function are to be removed. Instead the amounts from those derivative contracts should be recognised in line with the hedged item. This is achieved through the [application of the Disregard Regulations](#) to the group's financial statements.

### Example

XY plc operates a fleet of buses on which it incurs substantial fuel costs. It therefore enters into a series of fuel swaps to effectively fix the price it pays for the fuel. The fuel swaps are not designated as a hedge in the group accounts.

Consolidated financial statements: operating costs

Actual cost of fuel	£70m
Net settlement of fuel swaps in the period	£(5)m
Fair value movement on fuel swap	£8m
	£73m

The application of the Disregard Regulation to the group financial statements would be as follows:

- Regulation 8 would apply as there is a commodity contract that is hedging risks arising in respect of the costs of purchasing fuel (the hedged item) and the fair value profits and losses in respect of the hedged item are not recognised in the group accounts.
- As a result, all of the profits and losses on the swap are disregarded for the period. Instead, the amounts are brought into account when the hedged item affects the profit or loss. This is likely to follow the net settlement of the swaps in the period.
- The group will therefore have an overall fuel costs of £65m for the period included in the calculation of [group-EBITDA](#). This is calculated by

excluding the 'clean' fair value movement in the swap of £8m for the period.

# CFM96600 Interest restriction: Alternative calculations: Contents

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## CFM96610 Interest restriction: Alternative calculations: Overview

The default approach for calculating [group-interest](#) and [group-EBITDA](#) is based closely on the amounts recognised in the group's financial statements.

The following elections allow these amounts to be calculated more closely with the UK tax rules:

- [Group-EBITDA \(chargeable gains\) election](#)
- [Interest allowance \(alternative calculation\) election](#)



# CFM96620 Interest restriction: Alternative calculation: Group-EBITDA (chargeable gains) election

## TIOPA10/S422

The default approach for calculating [group-EBITDA](#) is based closely on the amounts recognised in the group's financial statements. Under the default approach, the [depreciation and amortisation adjustment](#) is made in respect of [relevant assets](#). This is to bring these assets into the calculation of group-EBITDA on a realisation basis and to exclude the effect of capital expenditure.

Where, however, the worldwide group's [reporting company](#) has made a 'group-EBITDA (chargeable gains) election' in its [interest restriction return](#), some further adjustments are made to the default approach to align the calculations more closely with the UK tax rules. The election applies to assets held or disposed of by any member of the world group - its effects are not restricted to [UK group companies](#).

## Background

While the UK rules for the taxation of chargeable gains are based on a realisation basis approach, there are a number of specific rules that can affect the calculation. For example:

- The base cost of an asset can include an uplift for indexation.
- If higher, companies can replace the original cost with the March 1982 value of the asset.
- In certain cases, a market value price will be imposed on the transaction. This can be relevant, for example, with the privatisation of the water industry.
- A gain can be 'rolled-over' or 'held-over' into the base cost of a new asset.

Furthermore, chargeable gains can be exempted from being taxed at all. In particular, gains and losses on the sale of shares can in certain cases be exempted under the [substantial shareholdings exemption](#).

## Effect of the election

Under the default approach the depreciation and amortisation adjustment includes the 'recalculated profit amounts' used in the [capital \(disposals\)](#)

[adjustment](#). This looks to calculate the profit on the disposal of [relevant assets](#) based on the disposals proceeds and the original cost as recognised in the group's financial statements.

The group-EBITDA (chargeable gains) election replaces these recalculated profit amounts used in the capital (disposals) adjustment with the sum of any relevant gains less the sum of relevant losses that accrue on disposal of [relevant assets](#). Where the sum of relevant gains less the sum of relevant losses is negative, the figure used is nil.

Where there is a net loss in a period, this amount is not deducted from group-EBITDA for the period. However, the net loss amount can be carried forward and treated as a relevant loss in the following period.

### **Relevant gains and losses**

A relevant gain or loss arises in respect of a relevant asset in two situations:

- Direct disposals ('condition A')
- This applies where a member of the group disposes of the asset during the relevant period of account.
- In this case, the relevant gain or loss is the amount of chargeable gain or allowable loss that would accrue to the member on disposal.
- Indirect disposals ('Condition B')
- This applies where a member of the group ceases to be a member during the relevant period of account and held the asset immediately before ceasing to be a member.
- In this case, the relevant gain or loss is the amount of chargeable gain or allowable loss that would accrue to the member on disposal if the relevant asset were disposed of before the member ceased to be part of the group. The consideration to be treated as received is an amount attributable to the relevant asset on a just and reasonable basis by considering the consideration received by the group for disposing of its interests in the member.

Where a member of the group disposes of shares in another member, it is only the underlying assets that give rise to relevant gains and losses. The shares in a member of the group do not themselves give rise to relevant gains or losses.

The legislation is driven by the gain or loss that accrues on disposal of assets in the period of account. As a result, even where the gain is deferred (for example under a hold-over relief claim), it is still the period in which the disposal occurs.

### **Assumptions**

In calculating these amount, the following assumptions are to be made:

- All group members are within the charge to Corporation Tax.
- The substantial shareholding exemption does not have any effect.
- Any double taxation relief claim does not have any effect.

### **Practical application**

When applying the above assumptions in the calculation of relevant gains and losses it is necessary to consider the practical implications of this tax fiction. This is particularly the case where the tax rules afford a degree of discretion, for example through claims and elections. In these cases reasonable assumptions should be made as to which claims and elections would be effected, and these should be applied consistently.

For example, where a group has made a disposal outside of the UK which would be eligible for roll-over relief into new assets under the UK tax rules, then it would be reasonable to assume that a roll-over relief claim could be made in respect of this gain.

# CFM96630 Interest restriction: Alternative calculation: Interest allowance (alternative calculation) election: overview

## TIOPA10/SCH7A/PARA16

A [reporting company](#) can make an election in a worldwide group's [interest restriction return](#) to apply alternative calculations provisions when calculating [group-interest](#) and [group-EBITDA](#). The effect of these provisions is to bring the amounts used when calculating these figures in line with UK tax principles for a number of areas.

This should lessen the risk of [disallowances](#) being increased by mismatches between accounting and UK tax rules. However, it will tend make compliance more complicated, because adjustments must typically be made even where the group member concerned is not subject to Corporation Tax. In such cases it is necessary to replace amounts disclosed in the group's financial statements by the amounts that would have been taken into account, had the company been subject to Corporation Tax.

This election affects the period of account of the worldwide group for which the reporting company is appointed as well as any subsequent periods of account and is irrevocable.

As the election only affects group-interest and group-EBITDA, it will only make a difference to:

- calculating [adjusted net group-interest](#) in applying the [debt cap](#); and
- applying the [group ratio method](#).

This election affects the following areas:

- [Capitalised interest for GAAP-taxable amounts](#)
- [Employers' pension contributions](#)
- [Employee share acquisitions](#)
- [Changes in accounting policy](#)

# CFM96640 Interest restriction: Alternative calculations: Interest allowance (alternative calculation) election: Capitalised interest

## TIOPA10/S423

The default approach for calculating [group-interest](#) and [group-EBITDA](#) is based closely on the amounts recognised in the group's financial statements. In particular, the calculation of [adjusted net group-interest expense](#) includes all amounts of interest that is capitalised in the period.

Where, however, the group has made an interest allowance (alternative calculation) election} certain adjustments are made to the default approach to align the calculations more closely with the UK tax rules. One such adjustment that is to mirror the UK tax rule for capitalised interest.

## Background

- The Corporation Tax rules for dealing with [capitalised interest and other amounts](#) distinguish between the nature of the asset or liability in which the amounts are capitalised.
- In most cases, tax relief is available for capitalised amounts at the time they are capitalised. However, where the asset or liability is taxed in line with the accounts (referred to as 'GAAP-taxable') the tax relief follows the accounting treatment. In particular, this applies to trading stock and intangible fixed assets.

## Effect of the election

- Where an interest allowance (alternative calculation) election is made, the adjustments made when calculating adjusted net group-interest expense in respect of capitalised interest are no longer applied.
- As a result, this brings the treatment in line with UK tax principles for loan relationships and derivative contracts.
- For the purposes of this section, all members of the group are treated as within the charge to Corporation Tax. As a result, the same treatment applies irrespective of the tax residence of the company holding the asset.

## Examples

The following examples contrasts the calculations under the [default approach](#).

### Example 1: Interest capitalised in fixed asset

JK plc prepares accounts to 31 March each year. It builds a factory for £40m as new premises for their widget manufacturing business. The company borrows money for this purpose and in doing so capitalises the interest of £4m incurred during the year ended 31 March 2018 during the construction of the factory. This borrowing cost increases the total value of the tangible fixed asset on the balance sheet to £44m. The factory is completed on 1 April 2018 and is subsequently depreciated over 10 years on a straight line basis.

JK plc has relevant interest expense amounts of £100m each year on other loans.

As the factory is classed as plant, property & equipment in the company's accounts, the interest is recognised in profit or loss through the depreciation charge.

In this case there is no difference with the default approach.

In summary:

	NGIE	ANGIE
Year ended 31 March 2018	£100m	£104m
Year ended 31 March 2019	£100m	£100m

### Example 2: Interest capitalised in trading stock - development property

YZ plc is a property development group. In year ended 31 March 2018 the group builds a new development property as part of its trading stock. The actual construction cost of the building is £100m, and the associated interest that is capitalised of £10m. In year 2, the group manages to sell the property for £150m.

Assume YZ plc has relevant interest expense amounts of £100m each year on other loans.

YZ plc has made an interest allowance (alternative calculation) election.

**Year 1**

In the first year, YZ plc capitalises the interest of £10m. As a result this amount is not reflected in the group's profit or loss for the period and hence is not included in calculating the net group-interest expense (in the same way as under the default approach).

Because an interest allowance (alternative calculation) election has been made, the £10m capitalised interest is not included in the adjusted net-group interest expense for the period.

**Year 2**

In the second year, YZ plc sells the property. The £10m capitalise interest is recognised in profit or loss as part of the cost of sale.

As the £10m now relates to the writing off of an asset, the £10m is to be included in the net group-interest expense (in the same way as under the default approach). This ensures that this interest cost is excluded from the calculation of group-EBITDA.

As an alternative calculation election has been made, no adjustment is made to NGIE in the calculation of ANGIE. As a result, the £10m is included in ANGIE in the year of disposal.

In summary:

	NGIE	ANGIE
Year ended 31 March 2018	£100m	£100m
Year ended 31 March 2019	£110m	£110m

# CFM96650 Interest restriction: Alternative calculations: Interest allowance (alternative calculation) election: Employers' pension contributions

## TIOPA10/S424

The default approach for calculating [group-interest](#) and [group-EBITDA](#) is based closely on the amounts recognised in the group's financial statements. Where, however, the group has made an [interest allowance \(alternative calculation\) election](#) certain adjustments are made to the default approach to align the calculations more closely with the UK tax rules.

One such adjustment that is made under this election is that the amounts are included in respect of registered pension schemes are based on the tax relief available under the UK tax rules.

## Background

The Corporation Tax rules in the UK contain special provision for the [timing of deductions for contributions to a registered pension scheme](#). In particular, a deduction for such contributions will normally only be given for the period in which the contribution is paid. In addition, special [spreading rules](#) apply where there is a significant increase in the level of employer contributions from one period to the next.

## Effect of the election

Under the interest allowance (alternative calculation) election, the pension numbers are adjusted by:

- Removing any amounts from the group's financial statements in respect of contributions made by an employer into a registered pension scheme; and
- Instead reducing the group's profit before tax by the total of relief available to the employers under the [UK pension rules](#).

This will typically mean that group-EBITDA is calculated on a paid basis for pension contributions to a registered pension scheme rather than in line with accounting treatment. It will also take account for the spreading rules where there has been a significant increase in the contributions made.



The election will not affect contributions and accounting entries in respect of non-UK pension schemes because these will not be registered schemes.

## **Example**

A group has two UK companies, P Ltd and Q Ltd. The group has a registered pension scheme, a defined benefit scheme, in respect of which P Ltd and Q Ltd both contribute.

In calculating the group-EBITDA figure for the group:

- Any amounts in respect of contributions to the registered pension scheme should be removed. This will include the pension costs recognised as part of staff costs and the net interest costs recognised in financial income and costs.
- The total amount of tax relief for P Ltd and Q Ltd in respect of contributions paid to the registered pension scheme should to be deducted from the group's profit before tax for the period.

# CFM96655 Interest restriction: Alternative calculations: Interest allowance (alternative calculation) election: Employee share acquisitions

## TIOPA10/S425

The default approach for calculating [group-interest](#) and [group-EBITDA](#) is based closely on the amounts recognised in the group's financial statements. Where, however, the group has made an interest allowance (alternative calculation) election certain adjustments are made to the default approach to align the calculations more closely with the UK tax rules.

One such adjustment that is made under this election is that the amounts are included in respect of employee share schemes are based on the tax relief available, or which would be available, under the UK tax rules.

## Background

The Corporation Tax rules contain special rules which provide relief in respect of employee share schemes. There are different rules for Share Incentive Plans (SIPs) and other employee share schemes.

For [Share Incentive Plans](#) (SIPs) companies will typically obtain relief under Part 11 CTA 2009 for the costs of setting up the scheme, the running costs of the scheme and the cost of making contributions into the plan.

For [other employee share schemes](#) companies will typically obtain relief under Part 12 CTA 2009 as follows:

- Where qualifying shares are provided directly to the employee, the amount of relief is the difference between the market value of the shares at the time they are acquired by the employee and the value of any consideration given to the company for them.
- Where qualifying shares are provided under an option, the relief is the difference between the market value of the shares at the time the shares are acquired by the employee under the option and the value of any consideration given for them.

## Effect of the election

Under the interest allowance (alternative calculation) election, the employee share scheme numbers are adjusted by:

- Removing any amounts from the group's financial statements in respect of employee share acquisition arrangements; and
- Instead reducing the group's profit before tax by a just and reasonable amount to reflect the total of relief available, or which would be available, to the employers under the share scheme rules.

The reference to 'employee share acquisition arrangements' means arrangements in respect of which the Corporation Tax treatment is determined under Parts 11 or 12 CTA 2009, or would be so determined if the employer company was within the charge to Corporation Tax.

## Example

A group operates a share option scheme for their employees. In calculating the group-EBITDA figure for the group:

- Any amounts in respect of the employee share scheme should be removed. This will include the expense recognised in respect of the share options at the time they are granted based on the fair value of the options at that time.
- The total amount of tax relief that would be available to the employers in respect of share options should to be deducted from the group's profit before tax for the period. This will typically be at the time they are exercised, based on the difference between the market value of the shares on exercise and the option exercise price.

# CFM96660 Interest restriction: Alternative calculations: Interest allowance (alternative calculation) election: Changes in accounting policy

## TIOPA10/S426

The default approach for calculating [group-interest](#) and [group-EBITDA](#) is based closely on the amounts recognised in the group's financial statements. Where, however, the group has made an interest allowance (alternative calculation) election certain adjustments are made to the default approach to align the calculations more closely with the UK tax rules.

One such adjustment that is made under this election is that the finance statements of the group are treated so to include adjustments from any change in accounting policy of the group.

## Background

Many parts of the Corporation Tax rules are based on amounts recognised in a company's accounts. Where, however, there is a change in accounting policy used by a company from one period to the next, there is a risk that amount of profits or losses could fall to be brought into account more than once or not at all.

To address this, the tax rules which are based on the accounting treatment typically have special rules to bring additional amounts into account on transition to the new accounting policy.

## Effect of the election

This is achieved by considering the position that the group would be in if the whole group was a single company within the charge to Corporation Tax and held the same assets and liabilities, and carried on the same activities, as the group undertakes.

Adjustments are made to the group's finance statements in line with the effect of the change in accounting policy provisions for:

- [Trading profits](#)
- [Loan relationships](#)

- [Derivative contracts](#)
- [Intangible fixed assets](#)

Note that the references to the loan relationships and derivative contracts provisions include the effect of the [Change of Accounting Policy Regulations 2004](#).

## Example

The group holds a loan receivables of £100m, against which it holds impairment allowances of £10m as at 31 December 2017. In 2018 it adopts IFRS 9 and as a result increases the opening impairment allowances to £15m as at 31 December 2017.

In line with the application of the loan relationship rules and the Change of Accounting Policy Regulation 2004, as they would apply if the group was a single company, the transitional adjustment of £5m should be treated as being brought into account over a ten year period starting in 2018.

As a result, the net group-interest expense figures will be treated as increased by £500,000 each year over that ten year period.

# CFM96700 Interest restriction: Joint Ventures: Contents

[CFM96710 Interest restriction: Joint Ventures: Overview](#)

[CFM96720 Interest restriction: Joint Ventures: Treatment when no elections apply: Contents](#)

[CFM96760 Interest restriction: Joint Ventures: Interest allowance \(non-consolidated investment\) election: Contents](#)

[CFM96820 Interest restriction: Joint Ventures: Interest allowance \(consolidated partnerships\) election: Contents](#)

[CFM96850 Interest restriction: Joint Ventures: Group Ratio \(Blended\) Election: Contents](#)

[CFM96910 Interest restriction: Joint Ventures: Qualifying Investment Company JV: Contents](#)

# CFM96710 Interest restriction: Joint Ventures: Overview

A [worldwide group](#) is defined at TIOPA10/s473 which consists of an ultimate parent and entities which are fully consolidated into the parent under IAS accounting standards.

This chapter of the guidance concerns the treatment of entities which the worldwide group holds interests in, but which are not fully consolidated into the financial statements of the ultimate parent. These entities are:

- Joint ventures;
- Associates; and
- Subsidiaries held at fair value.

## Joint ventures

A joint venture (JV) is defined for accountancy purposes as an entity in which the reporting entity holds an interest on a long term basis and is jointly controlled by the reporting entity and one or more other investors. The JV is controlled by the investors acting together and does not include instances where one of the investors has control of the JV. The JV is usually accounted for under the equity or gross equity method. This is where the profits earned by the JV are assessed and these profits are brought in by the investor in proportion of the investor's share of the JV.

## Associates entities

An associate is an entity other than a subsidiary in which another entity (the investor) has a participating interest and over whose operating and financial policies the investor exercises a significant interest. There is not the requirement as for JV that control is exercised with other investors. The associate is usually accounted for under the equity or gross equity method.

## Subsidiaries held at fair value

A subsidiary will be controlled by the worldwide group but for other reasons not consolidated into the ultimate parent. These subsidiaries can be held at fair value and follow the fair value method of accounting.

## Group-interest and group-EBITDA

Where the worldwide group holds interests in non-group entities the results of the entity will not be consolidated, on a line-by-line basis, in the group's financial statements. As a result, any amounts of interest and other financing costs incurred by the non-group entity will not ordinarily be included within group-interest.

The results of the non-group entity will be included into the group's financial statement as follows:

- The group's share of the results of JVs and associates.
- The fair value movements of the group's investment in subsidiaries held at fair value.

These amounts will be recognised as items of profit or loss in the group's financial statements. They will therefore be included in the group-EBITDA of the group.

This chapter of the guidance outlines additional flexibility to this treatment by introducing elections for unconsolidated entities which will allow groups and entities similar treatment to consolidated entities. In particular:

- The [interest allowance \(non-consolidated investment\)](#) election is at TIOPA10/s427. It allows a worldwide group to include a proportion of qualifying net group interest, adjusted net group Interest and group-EBITDA of an associated worldwide group.
- The [group ratio \(blended\) election](#) is at TIOPA10/s401. It allows an entity such as a Joint Venture which has two or more investors the option to take on a similar Group Ratio profile to that of its investors.
- In addition, the [interest allowance \(consolidated partnerships\) election](#) at TIOPA10/s430 allows a worldwide group which fully consolidates a partnership the option to treat the partnership as if it were not fully consolidated into the worldwide group for the purpose of calculating the worldwide group's group ratio, group-EBITDA, qualifying net group interest and adjusted net group interest.

## Public infrastructure rules

TIOPA10/s444 concerns how [qualifying infrastructure company JVs](#) are treated under the public Infrastructure rules. This rule apply to a JV company that is a qualifying infrastructure company which has investors that are both



non-qualifying infrastructure companies and qualifying infrastructure companies.

In this case these rules allow non-qualifying infrastructure company investors to be not disadvantaged by allowing the qualifying infrastructure company JV to effectively be divided between the two categories of investors, with the public infrastructure rules applying to the share of the company held by investors who are themselves qualifying infrastructure companies.

# **CFM96720 Interest restriction: Joint Ventures: Treatment when no elections apply: Contents**

[CFM96730 Interest restriction: Joint Ventures: Treatment when no elections apply: Group ratio and group interest](#)

[CFM96740 Interest restriction: Joint Ventures: Treatment when no elections apply: Example 1: Opaque JV](#)

[CFM96750 Interest restriction: Joint Ventures: Treatment when no elections apply: Example 2: Transparent JV](#)

# CFM96730 Interest restriction: Joint Ventures: Treatment when no elections apply: Group ratio and group interest

## Investor Group

Where a [worldwide group](#) has an interest in non-group entities the results of the entity will not be consolidated, on a line-by-line basis, in the group's financial statements. As a result, any amounts of interest and other financing costs incurred by the non-group entity will not ordinarily be included within group-interest.

The results of the non-group entity will be included into the group's financial statement as follows:

- The group's share of the results of JVs and associates.
- The fair value movements of the group's investment in subsidiaries held at fair value.

These amounts will be recognised as items of profit or loss in the group's financial statements. They will therefore be included in the group-EBITDA of the group.

Therefore, in comparison to a group entity, any interest incurred by the non-group entity will not be recognised as contributing to the net group-interest expense of the worldwide group. However any interest incurred by the group entity will be included in the group's net group-interest expense.

As a result, in comparison with an investment in a group entity, this will suppress the group ratio of the worldwide group. The non-group entity will not increase the net group interest expense of the worldwide group but if the non-group entity is profitable then this will increase group-EBITDA.

The [interest allowance \(non-consolidated investment\) election](#) provides flexibility around this treatment.

## Investee Group

### Opaque entities

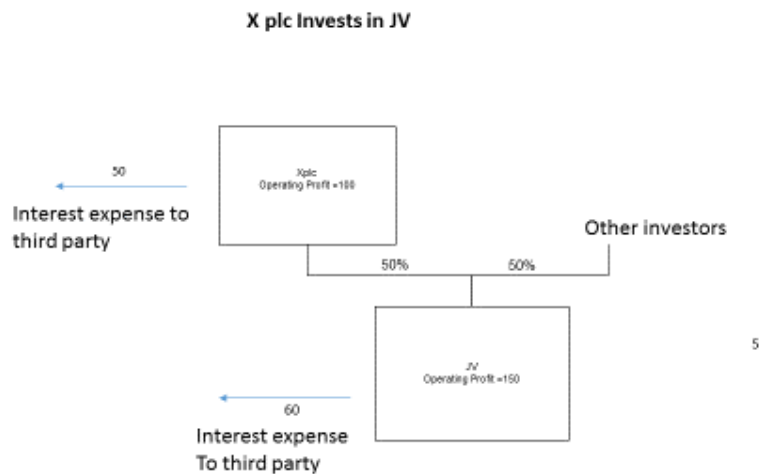
Where the non-group entity is a corporate body it is an [opaque entity](#) and will be taxed at the entity level and not taxed in the worldwide group. In some circumstances the entity may have a relatively low group ratio to that of its

investors. The entity does have the opportunity to obtain a similar group ratio to that of its investors by using the [Group Ratio \(Blended\) Rule](#).

### **Transparent Entities**

Where the non-group entity is a [transparent entity](#) the taxable profits of the entity that belong to the worldwide group will be taxed in the worldwide group.

# CFM96740 Interest restriction: Joint Ventures: Treatment when no elections apply: Example 1: Opaque JV



In this example we consider X plc, A worldwide group that has a 50% share of JV.

X plc has operating profits of 100 and pays interest to a third party of 50. JV has operating profits of 150 and pays interest to a third party of 60.

The calculations for the X plc group (the results of X plc with the share of the profits from the JV) and the JV are as follows.

Accounts	X plc	JV	X plc group
Operating profit	100	150	100
Third party interest expense (QNGIE)	(50)	(60)	(50)
Share of profits of JV			45

Profit Before Tax	<u>50</u>		<u>90</u>	<u>95</u>
Calculation of group ratio	X plc Group		JV	
Qualifying net group-interest expense	50	(A)	60	
PBT	95		90	
Add back interest expense	50		60	
Group-EBITDA	<u>145</u>	(B)	<u>150</u>	
Group ratio	34%	(A/B)	40%	(A/B)
	X plc		JV	
Tax-EBITDA	100		150	
Group ratio	34%		40%	
Interest allowance	<u>34</u>		<u>60</u>	
Net tax interest expense	50		60	
Less interest allowance	(34)		(60)	
Interest restriction	<u>16</u>		<u>0</u>	

## **X plc**

The X plc group has a qualifying net group-interest expense of 50. Its group-EBITDA is the group-EBITDA of X plc which is 100 and add to this the share of the profits of the JV which will feature in the consolidated accounts of X plc. This is 45 making the total Group EBITDA of 145. From this the group ratio of 34% is calculated.

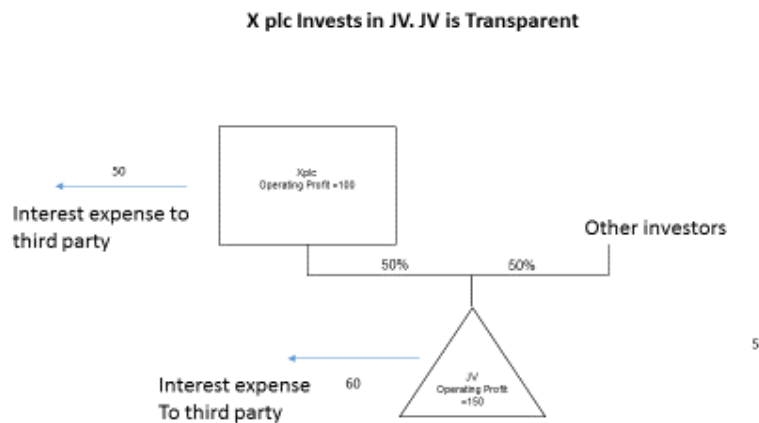
Calculating the [interest allowance](#) this group ratio is applied to the tax-EBITDA of the X plc group. Tax-EBITDA is 100 because the 45 of profits from the JV is not taxed in X plc and the JV is not part of the group. This gives interest allowance of 34. The net tax-interest expense is assumed to be the same as the group-interest figure of 50 meaning that there is an interest restriction of 16.

## **JV**

JV has qualifying net group interest expense of 60. Its group-EBITDA is 150. This creates a group ratio of 40%.

Calculating the interest capacity allows this 40% to be calculated against the tax-EBITDA. In this case the tax-EBITDA is assumed to be the same as the group-EBITDA and the net tax-interest expense is assumed to be the same as the qualifying net group interest expense of 60. This means that the interest allowance is 60 and, therefore, no interest restriction is applied to the JV. This is because the group ratio in the JV follows the interest profile of the JV.

# CFM96750 Interest restriction: Joint Ventures: Treatment when no elections apply: Example 2: Transparent JV



This example uses the same figures as in example 1. The only difference is that JV is transparent.

Accounts	X plc	JV	X plc group
Operating profit	100	150	100
3rd party interest expense (QNGIE)	(50)	(60)	(50)
Share of profits of JV	0		45
Profit Before Tax	50	90	95



Calculation of Group Ratio	X plc	
	Group	
Qualifying net group-interest expense	50	(A)
PBT	95	
Add back interest expense	50	
Group-EBITDA	<u>145</u>	(B)
Group Ratio	34%	(A/B)
Interest Allowance	X plc	
Tax-EBITDA	175	
X plc group ratio	34%	
Interest allowance	<u>60</u>	
Net tax-interest expense	80	
Less interest allowance	(60)	
Interest restriction	<u>20</u>	

### **X plc**

The accounting is exactly the same as for example so the group ratio remains the same. It is 34%.

However looking at the taxable profits of the X plc group all figures from its share of JV are brought into the X plc's tax computation. This means that X plc recognises 30 of interest from JV and 75 of operating profits. Therefore X plc has net tax interest of 50 + 30. It also included tax EBITDA of 75 from JV meaning that the tax-EBITDA for the group is 175. This means that there is an interest allowance of 60 which creates an interest restriction of 20.

## **JV**

JV is transparent and is not a taxable entity. Therefore the [interest allowance](#) and interest restriction do not apply to JV.

# **CFM96760 Interest restriction: Joint Ventures: Interest allowance (non-consolidated investment) election: Contents**

[CFM96770 Interest restriction: Joint Ventures: Interest allowance \(non-consolidated investment\) election: Group ratio and group interest](#)

[CFM96780 Interest restriction: Joint Ventures: Interest allowance \(non-consolidated investment\) election: Example 1: Opaque JV](#)

[CFM96790 Interest restriction: Joint Ventures: Interest allowance \(non-consolidated investment\) election: Example 2: Opaque JV with Loan from the Principal Worldwide Group](#)

[CFM96800 Interest restriction: Joint Ventures: Interest allowance \(non-consolidated investment\) election: Example 3: JV Group](#)

[CFM96810 Interest restriction: Joint Ventures: Interest allowance \(non-consolidated investment\) election: Example 4: Transparent JV](#)

# CFM96770 Interest restriction: Joint Ventures: Interest allowance (non-consolidated investment) election: Overview

## TIOPA10/S427-S429

Where a [worldwide group](#) has an investment in a non-consolidated entity any interest expense will not ordinarily be included in the net group-interest expense for the group. In addition, the group-EBITDA will include the group's share of the entity's profits for the period and, as a result, this can deflate the group ratio for the investing group.

Where debt is held in the non-consolidated entity then the investing group has an option to make an interest allowance (non-consolidated investment) election. The effect of making this election is at TIOPA10/s427. This gives the investing group a share of the non-consolidated entity's adjusted net group-interest expense and qualifying net group-interest expense. The group will also have a share of the group-EBITDA of the entity.

To take this option, the [reporting company](#) must make the [election in the interest restriction return](#). This should specify which non-consolidated investments the election should apply to.

The Interest allowance (non-consolidated investment) election only affects the the adjusted net group-interest expense, qualifying net group-interest expense and the group-EBITDA of the worldwide group that has the investment in the non-consolidated entity. The non-consolidated entity itself is not effected by the election. The election does not affect the tax-interest amounts or tax-EBITDA of the worldwide group.

## Definitions

### Principal worldwide group

The "principal worldwide group" as defined in TIOPA10/s427(2)(a). This is the worldwide group which is making the interest allowance (non-consolidated investment) election - the investing group.

## **Associated worldwide group**

“The associated worldwide group” is defined in TIOPA10/s428. This is a worldwide group of which a specified “non-consolidated associate” is the ultimate parent of the associated worldwide group.

TIOPA10/s428(3)(a) relaxes the normal rule so that the specified non-consolidated associate can be a partnership and still be the ultimate parent of the associated worldwide group.

## **Non-consolidated associate**

A “non-consolidated associate” is defined in TIOPA10/s429. This is an entity which, in respect of the principal worldwide group, satisfies one of the following conditions:

- Condition A covers entities that are joint ventures or associates and use the gross equity or equity method of accounting.
- Condition B covers partnerships that have been consolidated into the accounts and have elected into an [interest allowance \(consolidated partnerships\) election](#).
- Condition C covers a non-consolidated subsidiary of the principal worldwide group, for example subsidiaries that are held at fair value.

This means where a group has investment in an entity meets one of these conditions, the worldwide group can elect to make the interest allowance (non-consolidated investment) election in respect of that entity.

## **How to apply the election**

- Amounts from loans made by the principal worldwide group to the associated worldwide group are disregarded (s427(3)(a) / s428(5)).
- Such loans are ignored for the purposes of calculating adjusted net group-interest expense and qualifying net group-interest expense. Note that if the loan is made between related parties then the interest expense on this loan will have already been excluded from qualifying net group-interest expenses for the borrower.
- For example, principal worldwide group X makes a loan to associated group Y and results in Y making an interest payment to X of 50. X and Y are related parties. This loan transaction will not affect the qualifying net group-interest expense of Y. However with the election Y’s adjusted net group-interest expense will have to be reduced by 50 for the purpose of

applying TIOPA10/s429(4) for X's calculation of qualifying net-group interest expense. This does not affect Y's qualifying net group-interest expense in its own calculation. X's income receipt of 50 will be ignored meaning that the adjusted net group-interest expense and qualifying group interest expense in X will be increased by 50.

- Amounts of group-EBITDA of the principal worldwide group that relate to its share of profits and losses of the associated worldwide group are disregarded (s427(3)(b)).
- For example principal worldwide group X holds a 50% share and share of the profits in associated group Y. If Y has profits before tax of 100 then X is entitled to 50% of these profits so its group-EBITDA would include 50. If an election in relation to Y is made then group-EBITDA of X will be reduced by 50.
- Amounts of adjusted net group-interest expense, qualifying net group-interest expense and group-EBITDA in the principal worldwide group are increased by the appropriate proportion of the associated worldwide group (s427(4)-(6)).
- The appropriate proportion is defined as the proportion of profits or losses the principal worldwide group is entitled to.
- For example principal worldwide group X has a 50% holding and 50% entitlement to the profits of associated worldwide group Y. Y has profit before tax of 150 after deducting third party interest expense of 50. Y has adjusted net group-interest expense and qualifying net group-interest expense of 50. Y has no depreciation or amortisation and so has group-EBITDA of 200 (PBT + interest expense of 50 added back).
- Note that absent the election, accounting profits of 75 (50% of 150) in respect of Y would have to be included in group-EBITDA of X. Absent the election no amounts of group-interest would be included in respect of Y.
- With the election in place in respect of its investment in Y, X will remove the 75 from group-EBITDA. Instead X will be able to increase its adjusted net group-interest expense and qualifying net group-interest expense by 25 (50% of 50). Group X will increase its group-EBITDA by 100 (50% of 200).
- Therefore the net effect of the election on group-EBITDA for X will be to increase it by 25.

## **Non-Consolidated Associated joining the group during period of account**

There may be circumstances where the non-consolidated associate becomes a member of the principal worldwide group part way through a period of account. For example the principal worldwide group may obtain further share capital of an associate for it to become a subsidiary of the group. If this happened after six months after the beginning a 12 month period of account and the adjustments for the election would apply on a just and reasonable basis for the first six months of the period of account and no adjustments would arise in the final six months of the period of account.

## **Principal worldwide groups acquiring or disposing of some shares of the associated worldwide group in a period of account**

The principal worldwide group may hold different amounts of shares in the associated worldwide group throughout a period of account. When determining the appropriate proportion for the purposes of TIOPA 2010/s427(4) to (6) this can be determined by a method that is just and reasonable. A weighted average of the amount of proportion of the profits determined by the numbers of days this situation existed could be appropriate.

For example the principal worldwide group held a 20% proportion of the associated worldwide group for 100 days and increased its proportion to 40% for 265 days in the period of account. Assuming that the profits and or losses received from the associated group were in line with this shareholding then the appropriate proportion could be calculated to be

- $100/365 \times 20\% + 265/365 \times 40\% = 34.5\%$

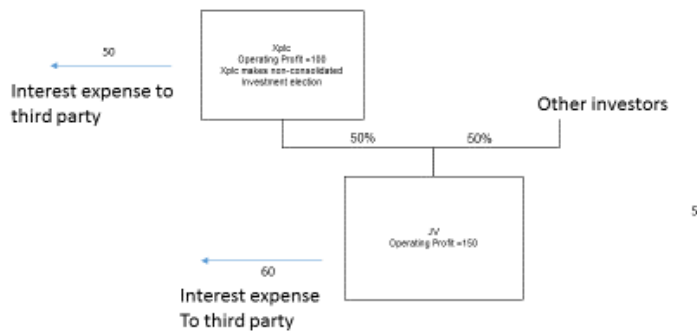
## **Examples**

The next four examples show how this election works for different circumstances.

- Example 1: Opaque JV entity
- Example 2: Opaque JV entity with loan from the Principal Worldwide Group
- Example 3: JV Group
- Example 4: Transparent JV

# CFM96780 Interest restriction: Joint Ventures: Interest allowance (non-consolidated investment) election: Example 1: Opaque JV

Using the same figures as in CFM96740. Looking at Xplc if it makes a Investment Allowance (non-consolidated investment) election



Here the same figures from the example at CFM96740 are used but consider that X plc has now made an investment allowance (non-consolidated investment) election. Note that qualifying net group-interest expense is referred to as QNGIE in the calculation.

Accounts	X plc	JV	X plc group
Operating profit	100	150	100
3rd party interest expense	(50)	(60)	(50)
Share of profits of JV			45
Profit Before Tax	<u>50</u>	<u>90</u>	<u>95</u>

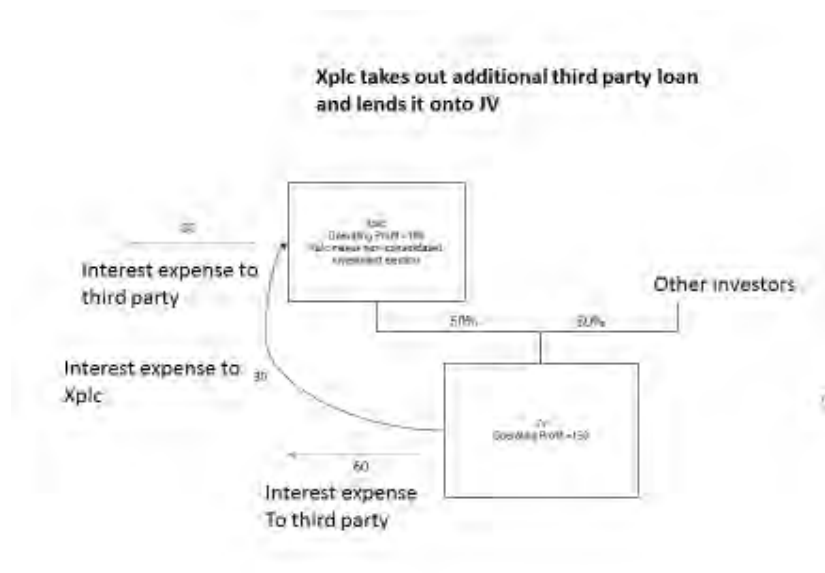


	X plc Group	
X plc group share of profits from JV	50%	
Calculation of QNGIE		
QNGIE in X plc group (pre-election)	50	
Share of JV QNGIE	30	
Total QNGIE	80	(A)
Calculation of group-EBITDA		
Group-EBITDA of X plc group (pre-election)	145	
Reduction in group-EBITDA from JV profits	(45)	
Increase in share of group-EBITDA from JV group-EBITDA	75	
Group-EBITDA	<u>175</u>	(B)
Group ratio with election	46%	(A/B)
Interest allowance	X plc	
Tax-EBITDA	100	
X plc group ratio	46%	
Interest allowance	<u>46</u>	

Net tax-interest expense for X plc group	50
Less interest allowance	(46)
Restriction	<u>4</u>
	<u><u>4</u></u>

With the election X plc is now able to calculate a group ratio of 46%. If this is compared to the example in CFM96740 when the election has not been made, this is a significant increase and leads to a reduction in the interest restriction.

## CFM96790 Interest restriction: Joint Ventures: Interest allowance (non-consolidated investment) election: Example 2: Opaque JV with loan from the Principal Worldwide Group



Here the amounts are the same as the previous example at CFM96780, but X plc has taken out additional third party interest which it has on-lent to the JV.

In this situation TIOPA10/s427(3)(a) and TIOPA10/s428(5) apply to the loan from X plc to the JV. Therefore the election effectively ignores these amounts featuring in the financial statements of the principal worldwide group and the associated worldwide group. These amounts do not form part of adjusted net group-interest expense in either the principal worldwide group or the associated worldwide group.

The net effect of this is to ignore the 30 of adjusted net group-interest expense of the JV and to ignore the 30 of corresponding interest income in the calculation of adjusted net group-interest expense in X plc. This means that X plc has 80 of adjusted net group-interest expense and similarly for qualifying net group-interest expense because none of this is offset by any interest income from the JV.

Accounts	X plc	JV	X plc group
Operating profit	100	150	100
3rd party interest (expense)	(80)	(60)	(80)
Related party interest (expense)/income	30	(30)	30
Share of profits of JV			30
Profit before tax	<u>50</u>	<u>60</u>	<u>80</u>
Profit before tax (ignoring loan)		<u>90</u>	
Share of profits of JV (ignoring loan)			45

	X plc Group	
X plc share of profits from JV	50%	
Calculation of QNGIE		
QNGIE in X plc	80	
Share of JV QNGIE	30	
Total QNGIE	110	(A)

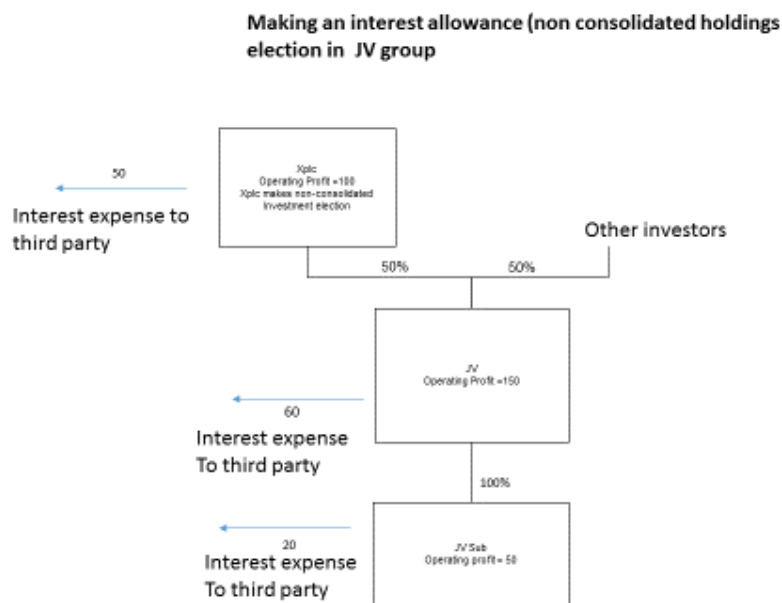
Calculation of group-EBITDA

PBT of X plc group (pre-election)	80	
Remove interest on loan to JV	(30)	
Remove share of JV's profits	(30)	
PBT of X plc group after adjustments	<u>20</u>	
Addback NGIE (excluding loan to JV))	80	
Group-EBITDA of X plc group (before share of JV (before share of JV group-EBITDA)	<u>100</u>	
Share of JV's group-EBITDA	75	
Group-EBITDA	<u>175</u>	(B)
Group ratio	63%	(A/B)
Interest allowance	X plc	
Tax-EBITDA	100	
X plc group ratio	63%	
Interest allowance	<u>63</u>	
Net tax-interest expense	50	
Less interest allowance	(63)	
Restriction	<u>-</u>	

X plc has a net tax-interest expense of 50 (tax-interest expense of 80 less tax interest income of 30). All of its third party interest of 80 is qualifying net

group-interest expense to use in its group ratio. The group interest income from JV is ignored for the purposes of TIOPA10/S427. It obtains a further qualifying net group-interest expense of 30 by its share in the third party interest of the JV. The group ratio is 63% and as there is an [interest allowance](#) of 63 there is no restriction of the net tax-interest expense in X plc.

# CFM96800 Interest restriction: Joint Ventures: Interest allowance (non-consolidated investment) election: Example 3: JV Group



Here the example at CFM96780 has been extended to a JV with a subsidiary which has operating profit of 50 and third party interest of 20. Applying the election requires that the results of the JV are consolidated and values can be included from qualifying net group-interest expense and group-EBITDA as before.

Consolidating the JV group	JV	JV Sub	JV Group
Operating profit	150	50	200
3rd party interest expense	(60)	(20)	(80)

Profit before tax	90	30	120
Accounts	X plc	JV Group	X plc group
Operating profit	100	200	100
3rd party interest expense	(50)	(80)	(50)
Share of profits of JV group			60
Profit before tax	<u>50</u>	<u>120</u>	<u>110</u>

	X plc Group
X plc share of profits from JV	50%

#### Calculation of QNGIE

QNGIE in X plc	50	
Share of JV Group QNGIE	40	
Total QNGIE	90	(A)

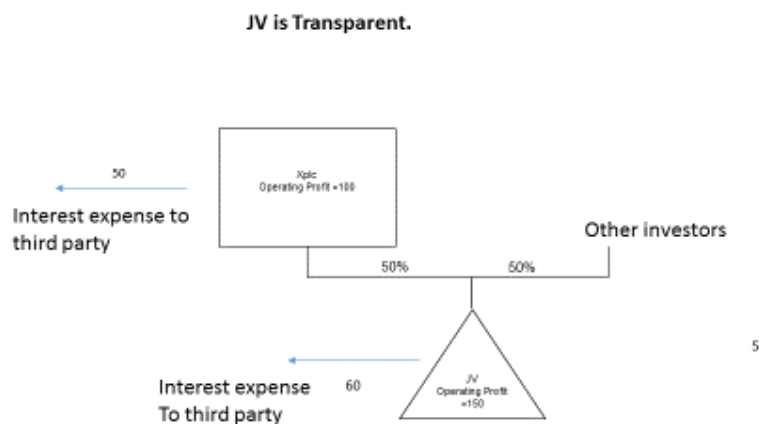


### Calculation of group-EBITDA

Group-EBITDA of X plc group	160	
Reduction in group-EBITDA from JV profits	(60)	
Share of JV group's group-EBITDA	100	
Group-EBITDA	<u>200</u>	(B)
Group ratio	45%	(A/B)
Interest allowance	X plc	
Tax-EBITDA	100	
X plc group ratio	45%	
Interest allowance	<u>45</u>	
Net tax-interest expense	50	
Less interest allowance	(45)	
Restriction	<u>5</u>	

X plc gets a share of the JV group qualifying net group-interest expense of 40. However there is also a net increase of group-EBITDA of 40. In this case X plc can calculate its group ratio of 45% and for this example there is an interest restriction of 5.

# CFM96810 Interest restriction: Joint Ventures: Interest allowance (non-consolidated investment) election: Example 4: Transparent JV



This has the same amount as the example in CFM96750 but in this case the JV is 'transparent' for tax purposes - for example it is a partnership. X plc makes an interest allowance (non-consolidated investment) election.

Accounts	X plc	JV	X plc group
Operating profit	100	150	100
3rd party interest expense (QNGIE)	(50)	(60)	(50)
Share of profits of JV			45

Profit before tax	<u>50</u>	<u>90</u>	<u>95</u>
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X plc

X plc share of profits from JV 50%

#### Calculation of QNGIE

QNGIE in X plc	50	
Share of JV QNGIE	30	
Total QNGIE	80	(A)

#### Calculation of group-EBITDA

Group-EBITDA of X plc group	145	
Reduction in group-EBITDA from JV profits	(45)	
Share of JV's group-EBITDA	75	
Group-EBITDA	<u>175</u>	(B)

Group ratio 46% (A/B)

Interest allowance X plc

Tax-EBITDA of X plc (including its share of the JV's taxable profits before interest) 175

X plc group ratio	46%
Interest allowance	<u>80</u>
Net tax-interest expense of X plc (including its share of the 60 interest expense of the transparent JV)	80
Less interest allowance	(80)
Restriction	<u>-</u>

The group ratio of X plc of 46% is the same as in example [CFM96780](#). As the JV is transparent for tax purposes, X plc includes its share of the profits and net tax interest expense of JV in its tax figures. Therefore tax-EBITDA of X plc is 175 (100 + 50% of 150). The [interest allowance](#) is 80 which is equal to the net tax-interest expense in the X plc group so there is now no restriction.

# **CFM96820 Interest restriction: Joint Ventures: Interest allowance (consolidated partnerships) election: Contents**

[CFM96830 Interest restriction: Joint Ventures: Interest allowance \(consolidated partnerships\) election: Effect of the election](#)

[CFM96840 Interest restriction: Joint Ventures: Interest allowance \(consolidated partnerships\) election: Example](#)

# CFM96830 Interest restriction: Joint Ventures: Interest allowance (consolidated partnerships) election: Effect of the election

## TIOPA10/S430

### Background

A [worldwide group](#) can include a partnership as a member if the partnership is controlled by the worldwide group. The partnership consolidates its results in the ultimate parent of the worldwide group. In calculating the group ratio of the worldwide group, the worldwide group can be disadvantaged by consolidating a partnership in certain circumstances.

The group ratio of the worldwide group will include the whole of the results of the JV as it is fully consolidated. This means that the whole of the group-EBITDA of the partnership will be included. However for the purpose of interest restriction the [tax-EBITDA](#) is calculated from the share of the partnership. Where the worldwide group is more highly geared than the partnership the difference between group-EBITDA and tax-EBITDA can potentially create an interest restriction that will be greater than the situation where the partnership is not consolidated into the worldwide group.

The election is designed to give a worldwide group the option to treat the partnership as if it was not consolidated for the purposes of calculating the worldwide group's group ratio. Once an election is made the partnership is treated as if it were a joint venture for the purposes of calculating the group ratio. An investment allowance (non-consolidated investment) election can be used in conjunction with this election.

### The effect of the election

#### Who can elect?

Worldwide groups that can only make an election if both Condition A and Condition B apply:

- Condition A is that the partnership is fully consolidated into the ultimate parent's financial statements (s430(5)).
- Condition B is that the partnership does not have a subsidiary (s430(6)).

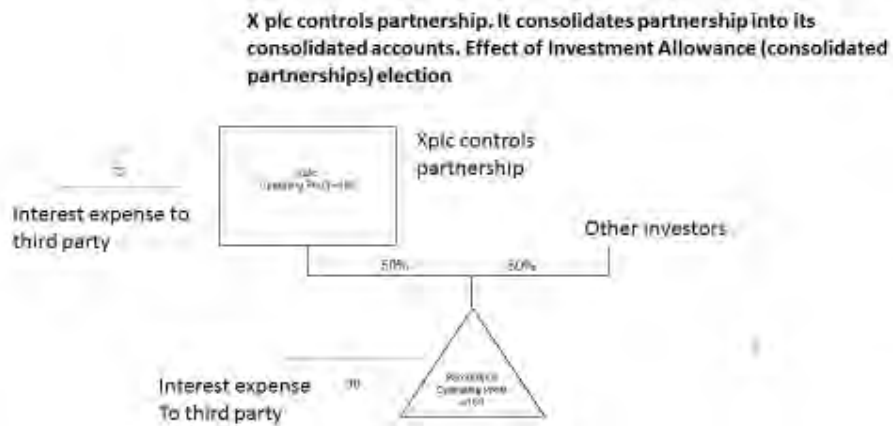
## What the election does?

The election has two effects:

- It reverses the effect of consolidating the results of the partnership in the consolidated results of the worldwide group (s320(2)(a)).
- And it requires the partnership to be accounted for under the equity method of accounting (s330(2)(b)).
- The result of this is that the partnership is deemed to be an entity that is not consolidated into the accounts of the worldwide group. It is accounted for as if it were a Joint Venture. The worldwide group is still taxed on the basis that the partnership is transparent.

Note that a worldwide group that has made a consolidated partnership election is able to also make an [interest allowance \(non-consolidated investment\) election \(s429\(3\)\)](#).

# CFM96840 Interest restriction: Joint Ventures: Interest allowance (consolidated partnerships) election: Example with interest allowance (consolidated partnerships) election



X plc gets a 50% profit share from the partnership but it controls the partnership. This means that the partnership is consolidated into X plc's financial statements. X plc has an operating profit of 100 with third party interest expense of 75. The partnership has operating profits of 150 and 30 of third party interest expense.

## The position without the election

Firstly assume that an election is not made.

Accounts	X plc	Partnership	X plc group
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Operating profit	100	150	250
3rd party interest expense (QNGIE)	(75)	(30)	(105)
Profit before tax	<u>25</u>	<u>120</u>	<u>145</u>
	X plc Group		
Qualifying net group-interest expense	105	(A)	
PBT	145		
Add back interest expense	105		
Group EBITDA	<u>250</u>	(B)	
Group Ratio	42%	(A/B)	
Interest allowance	X plc		
Tax-EBITDA	175		
X plc group ratio	42%		
Interest allowance	<u>74</u>		
Net tax-interest expense	90		
Less interest allowance	(74)		

Restriction	16
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For the purpose of calculating the group ratio X plc picks up a small amount of interest but a large amount of group-EBITDA from the partnership. The group ratio is calculated on a group-EBITDA of 250. However when calculating the [interest allowance](#) the group ratio is applied to a tax-EBITDA of 175. This disparity between group-EBITDA and tax-EBITDA causes an interest restriction of 16.

### With the consolidated partnership election

Applying the same figures and making an [interest allowance \(consolidated partnerships\) election](#). Under this election the financial statements for the group are assumed to include a share of the partnership's profits instead of being fully consolidated.

Accounts	X plc	Partnership	X plc group
Operating profit	100	150	100
3rd party interest expense (QNGIE)	(75)	(30)	(75)
Share of profits of partnership			60
Profit before tax	<u>25</u>	<u>120</u>	<u>85</u>

	X plc Group	
Qualifying net group-interest expense	75	(A)
PBT	85	

Add back interest expense	75	
Group-EBITDA	<u>160</u>	(B)
	<u><u>          </u></u>	
Group ratio	47%	(A/B)
Interest allowance	X plc	
Tax-EBITDA	175	
X plc group ratio	47%	
Interest allowance	<u>82</u>	
	<u><u>          </u></u>	
Net tax interest expense	90	
Less interest allowance	(82)	
Restriction	<u>8</u>	
	<u><u>          </u></u>	

The election is applied by treating the partnership as a joint venture. The election increases the group ratio to 47% and reduces the interest restriction to 8.

However, the worldwide group also has the option to elect into the Investment Allowance (non-consolidated investment) election.

**With the consolidated partnership and non-consolidated investment elections**

Applying the same figures and making an [interest allowance \(consolidated partnerships\) election](#) and an [interest allowance \(non-consolidated investment\) election](#).

Accounts	X plc	Partnership	X plc group
----------	-------	-------------	-------------

Operating profit	100	150	100
3rd party interest expense(QNGIE)	(75)	(30)	(75)
Share of profits of partnership			60
Profit before tax	<u>25</u>	<u>120</u>	<u>85</u>

X plc  
Group

X plc share of profits from JV 50%

#### Calculation of QNGIE

QNGIE in X plc	75
Share of JV QNGIE	15
Total QNGIE	90

#### Calculation of group-EBITDA

Group-EBITDA of X plc group	160
Reduction in group-EBITDA from JV profits	(60)
Share of JV's Group-EBITDA	75
Group-EBITDA	<u>175</u>

Group ratio	51%
Interest allowance	X plc
Tax-EBITDA	175
X plc group ratio	51%
Interest allowance	<u>90</u>
	<u><u>          </u></u>
Net tax-interest expense	90
Less interest allowance	(90)
Restriction	<u>-</u>
	<u><u>          </u></u>

Here the effect of the non-consolidated investment election with the consolidated partnership election increases the group ratio to 51%. X plc's net tax-interest expense is not restricted.

# **CFM96850 Interest restriction: Joint Ventures: Group Ratio (Blended) Election: Contents**

[CFM96860 Interest restriction: Joint Ventures: Group Ratio \(Blended\) Election: Application of Election](#)

[CFM96870 Interest restriction: Joint Ventures: Group Ratio \(Blended\) Election: Example](#)

[CFM96880 Interest restriction: Joint Ventures: Group Ratio \(Blended\) Election: Blended QNGIE](#)

[CFM96890 Interest restriction: Joint Ventures: Group Ratio \(Blended\) Election: Interaction with the non-consolidated investment election](#)

[CFM96900 Interest restriction: Joint Ventures: Group Ratio \(Blended\) Election: Treatment of elections in investor groups](#)

# **CFM96860 Interest restriction: Joint Ventures: Group Ratio (Blended) Election: Application of Election**

## **TIOPA10/S401-S404**

There may be instances where a worldwide group has a relatively low group ratio but its investors have high group ratios. This can particularly happen in the circumstance in the context of a joint venture (JV) that has significant amounts of related party interest. This can lead to an interest restriction in the JV.

Here we allow the group to elect to have the group ratio profile of its investors. In this circumstance it will have access to a higher group ratio than that calculated in the JV group and the interest restriction can be reduced or in some cases eliminated.

The group ratio (blended) election also includes a debt cap calculation. See [CFM96880](#) for further details.

To take this option, the [reporting company](#) of the group must make the [election in the interest restriction return](#).

### **Who can elect into the group ratio (blended) election**

Technically any worldwide group can make an election. However, only a group with a related party investor in the ultimate parent who has a higher group ratio than the group will benefit from making an election. This worldwide group would usually be an entity that is not consolidated into the investor's worldwide group. For example, a joint venture company, an associated company, or a subsidiary held at fair value that is not consolidated into the worldwide group.

The group in the position of making a blended group ratio election is referred to below as the 'JV group'

### **How to calculate the Blended Group Ratio of a worldwide group**

TIOPA10/S401 provides the rules for calculating a blended ratio of a group. Once an election is made the group ratio percentage of the JV Group does not apply. Instead it is replaced with the group ratio percentage as calculated in TIOPA10/s401(3).

This requires that each investor is considered separately and that the investor's 'applicable percentage' is multiplied by the investor's share in the JV group. The amounts are summed together to obtain the blended group ratio.

TIOPA10/s401(4) identifies the investor's applicable percentage which is the higher of:-

- 30% (the fixed ratio percentage).
- The JV group's actual group ratio.
- In the case where the investor is a related party, the group ratio of the investor's worldwide group.

If it is not possible to ascertain the group ratio of a particular investor then the group would be able to use the investor's applicable percentage, would be the higher of (i) 30% (the fixed ratio percentage); and (ii) the JV group's actual group ratio as calculated.

TIOPA10/s401(6) applies when the investor has periods of account overlapping the period of account of the JV group. Here the group ratio of the investor is effectively averaged for the period which coincides with the JV group.

### **Example**

Consider JV that has investors A, B, C and D.

A is a related party, has a share of 40% of JV and a group ratio of 70%.

B is a related party, has a share of 25% of JV and a group ratio of 32%.

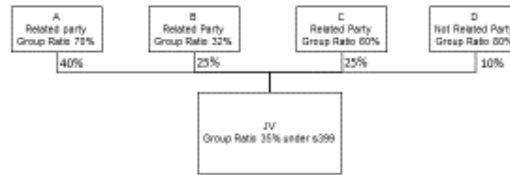
C is a related party, has a share of 25% of JV and a group ratio of 60%.

D is not a related party, has a share of 10% of JV and a group ratio of 80%.

JV has calculated its group ratio under TIOPA/s399 as 35%.



### Calculating the blended group ratio in JV



5

For Investor A the highest applicable percentage is at TIOPA10/s401(4)(c) which is the group ratio of investor A.

Contribution to Blended Group Ratio is  $70\% \times 40\% = 28\%$

For Investor B the highest applicable percentage is at TIOPA10/s401(4)(b) which is the group ratio of JV calculated under TIOPA10/s399 which is 35%

Contribution to Blended Group Ratio is  $35\% \times 25\% = 8.75\%$

For Investor C the highest applicable percentage is at TIOPA10/s401(4)(c) which is the group ratio of Investor C.

Contribution to Blended Group Ratio is  $60\% \times 25\% = 15\%$

For Investor D the highest applicable percentage is at TIOPA10/s401(4)(b) which is the group ratio of JV calculated under TIOPA10/s399 which is 35%. This is because investor D is not a related party.

Contribution to Blended Group Ratio is  $35\% \times 10\% = 3.5\%$

These four values are summed together to obtain the blended group ratio of JV.

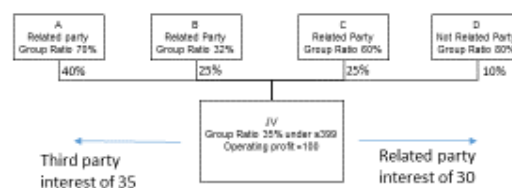
This is  $28\% + 8.75\% + 15\% + 3.5\% = 55.25\%$

In this circumstance it will be advantageous to make an election as the blended group ratio is higher than the group ratio as calculated under the normal rules.

# CFM96870 Interest restriction: Joint Ventures: Group Ratio (Blended) Election: Example

If there is third party and related party interest in the example shown in [CFM96860](#) the effect of a blended group ratio can be demonstrated.

Effect of Blended Group Ratio



## Election not made

Accounts	JV
Operating profit	100
Third party interest expense (QNGIE)	(35)
Related party interest	(30)
Profit before tax	<u>35</u>

Calculation of adjusted net group-interest expense	
Third party interest expense	35
Related party interest expense	30
Adjusted net group-interest expense	<u>65</u>
	<u><u>        </u></u>
	JV
Qualifying net group-interest expense	35
PBT for the JV	35
Add back adjusted net group-interest expense	65
Group-EBITDA	<u>100</u>
	<u><u>        </u></u>
Group Ratio	35%
Interest allowance	JV
Tax-EBITDA	100
X plc group ratio	35%
Interest allowance	<u>35</u>
	<u><u>        </u></u>
Net tax-interest expense	65

Less interest allowance	(35)
Restriction	<u>30</u>
	<u><u>          </u></u>

When the election is not made the group ratio of the JV is calculated under TIOPA10/s399 which works out at 35%. As the related party interest does not contribute to the group ratio there is a restriction of 30 in the JV

### **Blended group ratio election made**

Accounts	JV
Operating profit	100
3rd party interest expense (QNGIE)	(35)
Related party interest	(30)
Profit before tax	<u>35</u>
	<u><u>          </u></u>

#### Calculation of adjusted net group-interest expense

Third party interest expense	35
Related party interest expense	30
Adjusted net group interest expense	<u>65</u>
	<u><u>          </u></u>

JV

Blended Group Ratio from example in <a href="#">CFM96860</a>	55%
Interest allowance	JV
Tax-EBITDA	100
Blended group ratio	55%
Interest allowance	<u>55</u>
	<u><u>        </u></u>
Net tax-interest expense	65
Less interest allowance	(55)
Restriction	<u>10</u>
	<u><u>        </u></u>

If this situation is compared to the circumstance where no election is made the restriction is reduced to 10. Therefore, in this circumstance it is advantageous to make a group ratio (blended) election.

## **CFM96880 Interest restriction: Joint Ventures: Group Ratio (Blended) Election: Blended net group-interest expense**

Under the Group Ratio Method the interest allowance is normally set as the lower of:-

- The group ratio percentage applied to the aggregate tax-EBITDA of the group for the period; or
- The group ratio debt cap for the period.

By making the group ratio (blended) election, this allows the interest allowance to be calculated using a blended group ratio. However, when calculating the interest allowance, the group ratio debt cap also needs to be considered. This is particularly important in circumstances where there is a large amount of related party interest expense as the group ratio debt cap will be the limiting factor for the interest allowance.

Referring to the example at [CFM96870](#) if we apply the normal group ratio debt cap then the qualifying net group-interest of the JV will be the third party interest expense of 35. This is lower than the interest allowance calculated under TIOPA10/s398(a) using the blended ratio and so the [interest capacity](#) in the example at CFM96870 will be 35. In this case it would cause there to be an interest restriction of 30.

The situation is potentially more restrictive in the situation where the group which makes a blended election has interest expense that consists entirely of related party interest. In this case the qualifying net group-interest expense would be nil so without specific provision the group ratio (blended) election would be ineffective. The group would have to rely on the fixed ratio method and potentially a large interest restriction may happen.

TIOPA10/s402 works in a complementary way to TIOPA10/s401 where a group ratio (blended) election has been made.

### **Application of the blended net group-interest expense**

TIOPA10/S402 modifies the application of the group ratio debt cap where a group (JV group) makes a Group Ratio (Blended) election.

Instead of using the qualifying net group-interest expense of the group for the period, the blended net group-interest expense of the group for the period is

used. This requires the blended net group-interest expense to be calculated in accordance with TIOPA10/S402(3)-(4).

To calculate the blended net group-interest expense each investor in the JV group should be considered in turn.

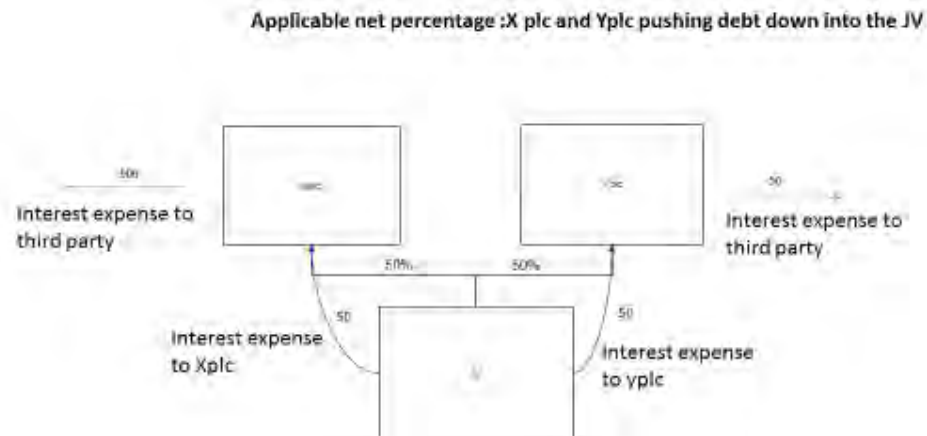
For each investor it needs to be determined how the applicable percentage is determined for the blended group ratio (see CFM 96860). For each investor determine whether step 1, step 2 or step 3 applies. Only one step will apply for each investor.

- Step 1 applies if the fixed ratio percentage of 30% is used for that investor (TIOPA10/S401(4)(a)). Under this step the adjusted net group-interest expense of the group is multiplied by the investor's share in the group.
- Step 2 applies if the actual group ratio of the group is used for that investor (TIOPA10/S401(4)(b)). Under this step the qualifying net group-interest of the group is multiplied by the investor's share in the group.
- Step 3 applies if the actual group ratio of the investor's worldwide group is used for that investor (TIOPA10/S401(4)(c)). Calculating the amount in this step requires consideration of TIOPA10/s402(4) to (8):
- TIOPA10/s402(4) determines the applicable net group-interest expense of the investor's worldwide group. This looks at loans or other financial arrangements in the investor's worldwide group that create qualifying net group-interest expense which are then used to fund (directly or indirectly) loans, or other financial arrangements, to the group making the blended election. Therefore if third party finance is taken out and wholly used to fund the JV group all of the gross amounts of qualifying net group interest expense from the third party finance is the applicable net group-interest expense.
- TIOPA10/s402(7)-(8) consider the situation where loans or other arrangements are used to part fund the JV group and part fund another purpose. In this case the applicable net group-interest expense is determined by how much of the qualifying net group interest expense is referable to the funding of the JV group on a just and reasonable basis. Therefore if the investor group takes out a third party loan that has 100 of qualifying net group-interest expense and it is determined that half of this loan is used to fund the JV and the other half is used to fund another purpose then the applicable net group interest expense will be 50.



Once these amounts have been calculated for each investor step 4 adds together the amounts for each investor together and this is the blended net group-interest expense for the group making the group ratio (blended) election.

## Example: Investors push down debt into a JV



X plc has a gross amount of qualifying net group-interest expense of 100 from a third party loan. However only part of the third party loan is invested in JV. It can be determined that 50 of this third party interest relates to the investment of funds in in JV. Therefore the applicable net group-interest expense is 50 in this case.

Y plc has a gross amount of qualifying net group-interest expense of 50 from a third party loan and all of the third party loan is invested in JV. Therefore the applicable net group interest of Y plc is 50.

Combining the results of X plc and Y plc mean that here the blended net group-interest expense of JV is 100 which is the group ratio debt cap for this example.

## **CFM96890 Interest restriction: Joint Ventures: Group Ratio (Blended) Election: Interaction with the non-consolidated investment election**

A joint venture (JV group) can be funded by the investors obtaining debt from third parties and pushing this debt down into the joint venture. In this circumstance all of the net tax-interest expense in the joint venture is related party debt and as a result the qualifying net group-interest expense for the JV group is nil. Therefore it is advantageous to use the group ratio (blended) election to calculate a group ratio for the JV group.

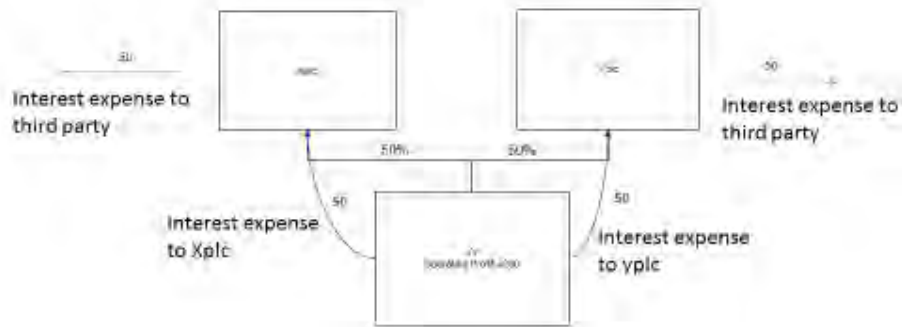
However if the only borrowing from the investors is from the third parties which is then pushed down then the investors will not have any qualifying net group-interest expense themselves. The interest expense to the third party will be covered by the interest receipt from the JV group. Therefore the investors will not have a group ratio so the group ratio (blended) election would be ineffective.

In these circumstances it would be advantageous for the investors to elect into the [interest allowance \(non-consolidated investment\) election](#). Such an election would not make any difference to the amount ultimately disallowed in the investor groups as their aggregate net tax-interest would be nil. However this benefits the JV group as it provides the investors with a group ratio that can be used by the JV group in calculating its group ratio.

CFM96900 below outlines the flexibility that the JV group has to specify whether it treats if investors of having made elections or not irrespective of whether an election has been made by the investor.

The interaction of the two elections can be illustrated by means of an example.

**X plc and Y plc pushing debt down into the JV. Interaction of Blended and non-consolidated investment election**



X plc takes out a third party loan which has an interest expense of 50. This loan is pushed down into JV with the same terms so the JV pays an interest expense of 50 to X plc. Y plc mirrors the lending of X plc. X plc and Y plc have no other income apart from their share in the JV and the interest income on the loans to JV.

Accounts	X plc and Y plc	JV	X plc and Y plc
Operating profit	-	200	-
Third party interest expense	(50)	-	(50)
Interest income	50		50
Related party interest expense		(100)	

Share of profits of JV			50
Profit before tax	-	100	50
	X plc Group		
X plc share of profits from JV	50%		
Calculation of QNGIE			
QNGIE in X plc	50		
Share of JV QNGIE	-		
Total QNGIE	50	(A)	
Calculation of Group-EBITDA			
Group-EBITDA of X plc Group	50		
Reduction in Group-EBITDA from JV profits	(50)		
Increase in share of Group-EBITDA from JV Group-EBITDA	100		
Group-EBITDA	100	(B)	
Group ratio of X plc	50%	(A/B)	
Similarly group ratio of Y plc	50%		
Blended group ratio for JV	50%	(50% of 50% + 50% of 50%)	

	JV
Tax-EBITDA	200
Group ratio from blended election	50%
Interest allowance	100
Net tax-interest expense	100
Interest restriction	-
Group ratio debt cap (blended net group-interest expense)	100
Interest restriction	-

## **X plc and Y plc**

The investment allowance (non-consolidated election) ignores the loans to the JV so X plc and Y plc have qualifying net group interest expense of 50 from the third party expense. X plc and Y plc take their share of group-EBITDA from the JV. This is  $50\% * 200 = 100$ . Therefore the group ratio in both X plc and Y plc is 50%

## **JV**

When the group ratio (blended) election is applied the blended group ratio of JV is  $50\%*50 + 50\%*50 = 50\%$ . If this is applied to the tax-EBITDA of JV this gives an [interest capacity](#) of 100 which corresponds with the net tax interest of JV. This means that there will be no restriction.

The blended debt cap is restricted to the qualifying net group-interest expense of X plc and Y plc that is used to fund JV. As in this case the funding is solely used to fund JV then both X plc and Y plc have an applicable net group-interest expense of 50 which gives the blended net group-interest expense of JV as 100. Therefore this does not create an additional restriction beyond the application of the blended group ratio.

# **CFM96900 Interest restriction: Joint Ventures: Group Ratio (Blended) Election: Treatment of elections in investor groups**

## **TIOPA10/S403**

This section allows the group making a group ratio (blended) election some flexibility in applying or not applying certain elections that have been made by the investor groups.

It allows the group, for the purposes of the blended group ratio election, to treat the investor group as if it had made an election or as if it had not made an election. These elections have to be specified by the group making the group ratio (blended) as having been treated as being made or not made.

Where a particular election has not been so specified, then the investor is treated for the purpose of calculating the group ratio (blended) election as having made the elections that it has actually made.

### **Example of non-UK group that is not within Corporate Interest Regime**

This allows groups that make a group ratio (blended) election more flexibility in their calculation of the blended group ratio. A specific example where this may be advantageous is in the case of an investor which is a non-UK group that is not affected by the Corporate Interest Restriction Regime.

If the example in [CFM96890](#) is used and Y plc is a non-UK group that is not in the Corporate Interest Restriction regime then Y plc will not be able to make an [interest allowance \(non-consolidated investment\) election](#). Therefore it will have a group ratio of 0% and the blended group ratio for the JV falls to 40%. This would give an interest restriction of 20.

However the group making the blended election can specify that its calculation is based upon the assumption that Y plc has made a non-consolidated investment election. This means that the calculation will now be exactly the same as in [CFM96890](#). The blended group ratio is 50% and this creates no interest restriction from the blended calculation.

# **CFM96910 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Contents**

[CFM96920 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Treatment of a single QIC JV company](#)

[CFM96930 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: How TIOPA10/s401 and TIOPA10/S427 apply to a single company that has made a section 444 election](#)

[CFM96940 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Example of interaction of S444 with both S427 and S401](#)

[CFM96950 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Application to JV group with QIC subsidiaries](#)

[CFM96960 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Effect on other companies](#)



# **CFM96920 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Treatment of a single QIC JV company**

## **TIOPA10/S444**

The public infrastructure rules set out specific provisions for how certain qualifying infrastructure companies (QICs) are treated under the Corporation Interest Restriction rules. In particular, where the relevant conditions are satisfied and the company so elects, the amounts qualifying tax-interest and tax-EBITDA are excluded from the normal calculations.

A joint venture company (JV) can be a QIC where it meets the conditions in TIOPA10/S433 in the same way as for all other companies. Under these provisions, all third party interest in the JV is excluded from being tax-interest expense by virtue of TIOPA10/s438(3)(a).

Where the investors in the QIC JV are all QICs related party interest paid to those investors is also excluded by virtue of TIOPA10/s438(3)(b) because the investors themselves are QICs.

However, if some of investors are not QICs then this can create a restriction of the related party interest. So while third party interest and interest paid to the QIC investors is excluded from being tax interest expense, interest paid to the non-QIC, related party investors is not excluded from being tax interest expense. Given the tax-EBITDA of the QIC JV is nil then it can be impossible for the JV to get any relief for this related party interest paid to non-QIC investors.

It may not be beneficial for the non-QIC investor to invest in a QIC company as any related party interest from these investors would be all restricted. However, if the non-QIC investors were to insist that the JV became a non-QIC company then the QIC investors would typically lose their QIC status as they would be holding shares in a company that is not a QIC (TIOPA10/s433(5)-(10)). Therefore this could discourage any investment in a joint venture between QIC and non-QIC investors.

The joint venture election under TIOPA10/s444 allows a QIC JV company to retain aspects of its QIC status in relation to the interests held by QIC investors but also ensure that it is not disadvantaged by non-QIC investors. There is no prescribed form for the election. If the group has a Customer

Compliance Manager (CCM), elections can be sent to them, otherwise see the CIR internet page for where to send elections.

## **The requirements for a joint venture election**

A joint venture election can be made in the following circumstances:-

- The JV company must have at least one QIC as an investor.
- The JV company has to be an ultimate parent of a worldwide group at all times in the period of account of the worldwide group.
- The remaining shares not held by QIC investors are held by investors who are not QICs.
- If each of the investors must have lent money to the JV company.
- The amounts that each of the investors has lent to the JV company stand in the same or substantially the same proportion as the shares in the JV company that each of them has.
- At all times in the accounting period, the investors have the same rights in relation to the shares in or assets of the JV company and the same rights in money debts or debts in question.
- The joint venture company makes an election so that this section applies for the accounting period.

## **Effect of the election**

Where an election is made for an accounting period during which the JV company is not the ultimate parent of a multi-company group, this has the following effect on the operation of the public infrastructure rules:

TIOPA10/s444(5)-(7) apply to reduce an exempt amount of the joint venture with application to interest expense paid to parties who are not investors in the JV. This would usually cover interest paid to third parties but it could cover interest paid to a related party QIC companies that are not investors in the JV company.

The exempt amount is reduced by reference to the qualifying proportion of the joint venture company. So in the circumstance where the joint venture company has third party interest of 50 with a share of qualifying investors at 60% and non-qualifying investors at 40% then the exempt amount of this third party interest will be 60% of 50 = 30. Any amounts not covered by the exempt amount remain as tax-interest. Therefore the remaining 20 of third party

interest becomes tax-interest expense as does any related party interest paid to non-qualifying investors.

TIOPA10/S444(8) applies so that the public infrastructure rules only exclude the qualifying proportion of the tax-interest income of the JV company.

TIOPA10/s444(9) applies so that the JV includes some tax-EBITDA. This tax-EBITDA is based upon the tax-EBITDA of the JV that would be calculated without the chapter 8 provisions. The tax-EBITDA of the JV under the election is the non-qualifying investors' proportion of the JV of the total tax-EBITDA of the JV.

So for example consider the position where, without applying the public infrastructure rules, the tax-EBITDA of the JV is 100. If the non-qualifying investors' proportion of the JV is 40% then the tax-EBITDA will be 40.

TIOPA10/s444(10) acts in a similar way to TIOPA10/S444(9) for group-EBITDA. This section allows the group that contains the JV company to have an amount of group-EBITDA from the JV in proportion of the non-qualifying investors' share of the joint venture to the group-EBITDA that the joint venture would have if the provisions of chapter 8 did not apply. There in an analogous example if the JV company without the provisions of chapter contributed 100 to group-EBITDA and the non-qualifying proportion of the JV company is 40% then the contribution of the JV to group-EBITDA would be reduced to 40.

These rules are modified in respect of JV group where a JV company is the ultimate parent of a multi-company worldwide group.

# CFM96930 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: How TIOPA10/s401 and TIOPA10/S427 apply to a single company that has made a section 444 election

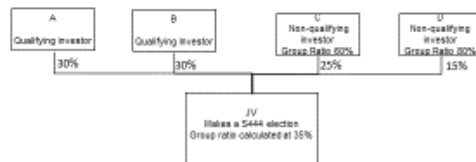
## TIOPA10/444(2)-(3)

### The Group Ratio (Blended) Election

A JV company that has made a QIC joint venture election can still make a group ratio (blended) election under TIOPA10/s401. TIOPA10/s444(2) modifies the calculation assuming that the qualifying investors are removed from the calculation.

#### Example

Blended group ratio in JV that makes a TIOPA 2010/s444 election



In this example the JV has two qualifying investors that each have a 30% share and two non-qualifying investors that have 25% and 15% shares respectively.

For the purpose of the blended group ratio calculation we assume that the qualifying investors were not investors in the group. This means that A and B are treated as if they do not have a share of the JV.

C's share is now recalculated as  $25/40 \times 100 = 62.5\%$

D's share is now recalculated as  $15/40 \times 100 = 37.5\%$

The blended ratio is calculated under S401(3)-(4).

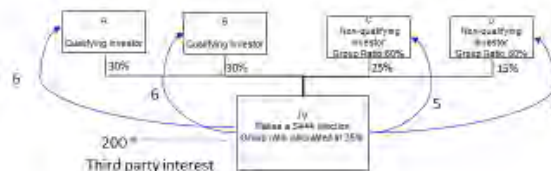
This is  $(62.5\% \times 60\%) + (37.5\% \times 80\%) = 37.5 + 30 = 67.5\%$

## The Interest Allowance (non-consolidated investment) election

A non-qualifying company that is an investor in a QIC that makes a QIC joint venture election can still make an [interest allowance \(non-consolidated investment\) election](#). TIOPA10/s444(3) modifies the calculation assuming that the qualifying investors are not included in the calculation.

To illustrate how the election works we assume the same structure as the previous example. The JV has third party interest expense of 200 and has group EBITDA of 100. A, B, C and D each lend to the JV and receive related party interest from the JV of 6, 6, 5 and 3 respectively.

Interest Allowance consolidated election in JV under TIOPA10/s444



TIOPA10/s444(5) calculates the exempt amount from the third party interest of the JV. The combined qualifying proportion of A and B is 60% so the

exempt amount is  $60/100 \times 200 = 120$ . The interest of 12 that is paid to A and B is also an exempt amount as A and B are QICs. Therefore the total exempt amount in the JV is 132.

It therefore follows under TIOPA10/s442(2) that the remaining amount that is not an exempt amount is 80 and as this is third party interest both the adjusted net group-interest expense and qualifying net group-interest expense of JV is 80. The interest paid of 8 to C and D is related party interest expense and this increases the adjusted net group-interest expense by 8. It does not increase the qualifying net group-interest expense.

Under TIOPA10/s444(10) the group-EBITDA of JV is calculated to the proportion of the non-qualifying investors. This is  $40/100 \times 100 = 40$ .

Applying TIOPA10/s444(3) it is assumed for the purposes of applying the non-consolidated investment election that the qualifying investors are ignored so the effective proportions of the group held by the non-qualifying investors are not further diluted. These are calculated as follows:

C's share is 62.5% and Ds share is 37.5%.

### **Application of the non-consolidated investment election to C**

C increases its adjusted net group-interest expense on the remaining third party interest of 80 by  $(62.5/100) \times 80 = 50$

C increases its qualifying net group-interest expense on the remaining third party interest of 80 by  $(62.5/100) \times 80 = 50$

For the purposes of this election the loan from C to JV of 5 is ignored. C increases its adjusted net group interest expense on the balance of the related party interest by  $(62.5/100) \times 3 = 1.9$

C share of the JV's group-EBITDA is  $(62.5/100) \times 40 = 25$

### **Application of the non-consolidated investment election to D**

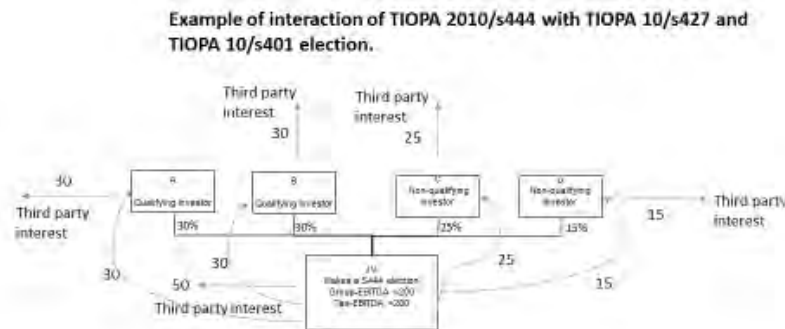
D increases its adjusted net group-interest expense on the remaining third party interest of 80 by  $(37.5/100) \times 80 = 30$

D increases its qualifying net group-interest expense on the remaining third party interest of 80 by  $(37.5/100) \times 80 = 30$

For the purposes of this election the loan from D to JV of 3 is ignored. D increases its adjusted net group interest expense on the balance of the related party interest by  $(37.5/100) \times 5 = 1.9$

D share of the JV's group-EBITDA is  $(37.5/100) \times 40 = 15$

# CFM96940 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Example of interaction of S444 with both S427 and S401



Here the investors raise third party debt and lend this on to JV. This lending is done in proportion to their shares as required by TIOPA10/s444(1)(d). The JV also raises third party debt. Investors A and B are qualifying infrastructure companies. Investors C and D are non-qualifying infrastructure companies. The only activity in A, B, C and D is the holding of the JV and the taking out of third party loans and the on-lending of these loans to JV.

The 60 of interest paid from JV to investors A and B is an exempt amount by virtue of TIOPA10/s438(3)(b) as in each case the creditor is a QIC. Only the qualifying proportion of the 50 that is paid by JV to a third party is an exempt amount. Applying TIOPA10/s444(5)(b) and (6) this is  $60\% \times 50 = 30$ . Therefore the total exempt amount is  $60 + 30 = 90$ . This amount is therefore excluded from tax-interest. In addition, this amount is not included in adjusted net group-interest expense or qualifying net group-interest expense.

The interest of 40 which is paid to investors C and D is included with tax-interest expense. It therefore is also included in the adjusted net group interest expense for the JV group. However as this interest is paid to related parties it is not qualifying net group-interest expense. The balance of 20 paid



by JV to the third party is included as adjusted net group-interest and qualifying net group-interest.

Overall in this example the tax-interest expense is  $20 + 40 = 60$ . Likewise, the adjusted net group interest is 60 and the qualifying net group-interest expense of the JV group is 20.

## **Restriction in JV if no blended election made**

If JV does not make a group ratio (blended) election then its group ratio will be  $20/200 = 10\%$ . As this is less than 30% the JV has to rely on the fixed ratio rule. The tax-EBITDA of JV is reduced to the non-qualifying proportion which is  $40\% \times 200 = 80$ .

The interest allowance is calculated by the fixed ratio rule is therefore  $30\% \times 80 = 24$ . Therefore there would be an interest restriction of 36.

## **Making a group ratio (blended) election in isolation**

Applying TIOPA10/s444(2) excludes the qualifying investor for the purposes of calculating the blended group ratio election. However without investors C and D making a non-consolidated investment election the blended election would not reduce this interest restriction. This is because both C and D do not have any qualifying net group-interest expense. In C the 25 of interest expense paid to the third part is netted off by the 25 of interest income received from JV. The situation in D is similar with the interest expense of 15 netted off by the interest income of 15. Therefore B and C have group ratios of nil without the benefit of the non-consolidated investment election.

## **C and D make a non-consolidated investment election**

We now assume that C and D each make an interest allowance (non-consolidated investment) election or are treated as making such an election (under s403(2)).

### **Investor C**

Applying TIOPA10/s444(3) means that we ignore the qualifying investor's share of the profits and the interest income from JV. This means for the purposes of section 427 investor C just has qualifying net group-interest expense of 25. This is the third party interest. JV has qualifying net group-interest expense of 20 (see above). Applying TIOPA10/s427(5) and s444(3)

means that C takes the appropriate proportion of this qualifying net group interest. This qualifying net group interest expense of 20 is then divided between the non-qualifying investors.

Applying TIOPA10\427(6) means that B takes the appropriate proportion of the JV's group-EBITDA. The total group-EBITDA of JV is calculated by applying TIOPA10\444(10). This is therefore  $40\% \times 200 = 80$  (the non-qualifying proportion of the original 200).

This group-EBITDA of 80 is then divided between the non-qualifying investors. C has a 62.5% share ( $25/40$ ) and D has a 37.5% share ( $15/40$ ).

Additional qualifying net group interest in C =  $62.5\% \times 20 = 12.5$  which gives a total qualifying net group-interest expense of  $25 + 12.5 = 37.5$ .

Group-EBITDA for C =  $62.5\% \times 80 = 50$ .

Which gives a group ratio for C =  $37.5/50 = 75\%$ .

### **Investor D**

The same treatment applies to D as with investor C.

Additional qualifying net group interest in D =  $37.5\% \times 20 = 7.5$ .

Investor D has qualifying net group-interest expense of  $15 + 7.5 = 22.5$ .

Group-EBITDA of D =  $37.5\% \times 80 = 30$ .

Group ratio of D =  $22.5/30 = 75\%$ .

### **JV company**

Now apply to the blended group ratio calculation of JV.

Using the group ratios of C and D after applying the non-consolidated investment allowance election, the blended group ratio of JV =  $(62.5\% \times 75\%) + (37.5\% \times 75\%) = 75\%$ .

This blended group ratio is applied to the tax-EBITDA so interest allowance =  $75\% \times 80 = 60$ . Therefore there is no interest restriction and the remaining tax-interest can be deducted.

# **CFM96950 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Application to JV group with QIC subsidiaries**

## **TIOPA10/445**

The basic QIC joint venture election under TIOPA10/S444 operates where the JV is not the ultimate parent of a multi-company group at any point in the accounting period. TIOPA10/s445 modifies the effect of the election where the JV holds a consolidated subsidiary in the period.

## **Conditions for a JV group TIOPA10**

Where a JV company is the ultimate parent of a worldwide group at any point in the accounting period, the QIC joint venture has no effect unless:

- All companies within the JV [worldwide group](#) are qualifying infrastructure companies.
- The ultimate parent of the JV worldwide group wholly owns the entities throughout the period.
- All companies in the JV worldwide group have the same accounting periods.

## **Modifications for a JV group**

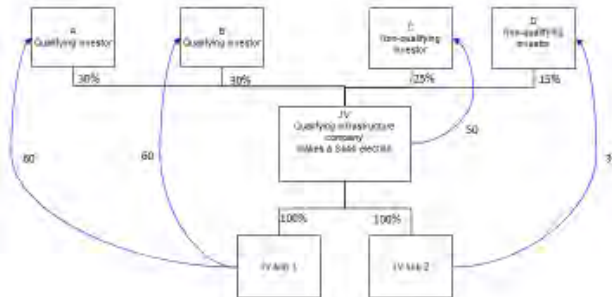
### **Conditions for the QIC joint venture election**

Note that the conditions in TIOPA10/S444 still need to be satisfied, subject to the following modifications.

For the purposes of applying the conditions under TIOPA10/s444(1)(c)-(e) loans made by investors to the other subsidiaries will be treated as if they

were made to the ultimate parent of the JV group (TIOPA10/S445(3)).

#### How TIOPA10/s445 applies to a JV group



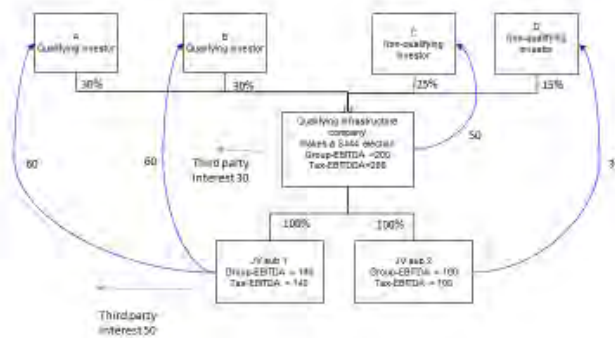
In this example the investors lend to the JV group in proportion to their share of the ultimate parent of the JV group. All four investors can lend to different members of JV but as long as the lending is proportionate with the share of the ultimate parent of the JV the condition of TIOPA10/s444(1)(d) is fulfilled. This would also be the case if some loans in the example are split between members of the JV group. For example investor D could have two separate loans to JV and JV sub 2 which return interest of 10 and 20 respectively. If everything else remains the same then TIOPA10/s444(1)(d) would still be fulfilled.

#### Effect of the QIC joint venture election on the JV Group

Where the JV company which heads a JV group makes an QIC joint venture election then the effect of the election applies to all members of the JV group (TIOPA10/S445(4)).

## Example

### How TIOPA10/s445 applies to a JV group



Each company in the JV group can be considered for how it is treated under the QIC joint venture election TIOPA10.

### Treatment of JV parent

JV parent has third party interest of 30 and interest paid to the non-qualifying investor C of 50. It has a group-EBITDA and tax-EBTIDA of 100.

Applying TIOPA10/S444(6) to the third party interest of 30 then 60% of 30 is an exempt amount of 18. The remaining 12 is tax-interest expense for the JV parent. It therefore is also included in both adjusted net group-interest expense and adjusted net group-interest expense.

The 50 of interest paid to investor C cannot be an exempt amount because it is paid to a related party that is not a qualifying infrastructure company. This adds to the adjusted net group-interest expense but does not add the qualifying net group-interest expense as it is paid to a related party.

Overall there is a tax-interest expense for the JV parent of  $50 + 12 = 62$ .

Applying TIOPA10/s444(9) gives a tax-EBITDA figure for the JV parent of 40% of 200 = 80.

In a similar way applying TIOPA10/s444(10) gives a group-EBITDA figure in respect of the JV parent of 80.

### **Treatment of JV sub 1**

JV sub 1 has third party interest of 50 and interest paid to the qualifying investors A and B of 120. It has a tax-EBITDA of 140 before considering the effect of the QIC JV election, which is the amount it contributes to the group-EBITDA of the JV group.

Applying TIOPA10/S444(6) to the third party interest of 50 means that there is an exempt amount of 30 (60% of 50). The remaining 20 is tax-interest expense for JV sub 1. It is also the contribution of JV Sub 1 to both adjusted net group-interest expense and adjusted net group-interest expense of the JV Group.

The 120 of interest paid to investors A and B is an exempt amount because it is paid to a related party that is a qualifying infrastructure company. This is therefore excluded from the adjusted net group-interest expense and qualifying net group-interest expense of the JV group.

Overall there is a tax-interest expense of 20 that is not an exempt amount.

Applying TIOPA10/s444(9) gives a tax-EBITDA figure for JV sub 1 of 40% of 140 = 56.

In a similar way applying TIOPPA 2010/s444(10) means that the JV sub 1 contributes 56 towards the group-EBITDA for the JV Group.

### **Treatment of JV sub 2**

JV sub 2 has no third party interest and interest paid to the non-qualifying investor D of 30. It has tax-EBITDA of 60 before considering the effect of the QIC JV election.

The 30 of interest paid to investor C is not an exempt amount because it is paid to a related party that is a non-qualifying infrastructure company.

This 30 of interest is therefore included as part adjusted net group-interest expense for the JV Group. However, it cannot be included in qualifying net group-interest expense as it is paid to a related party.

Overall there is a tax-interest expense of 30 that is not an exempt amount.

Applying TIOPA10/s444(9) gives a tax-EBITDA figure for JV sub 2 of 40% of 100 = 40.

In a similar way applying TIOPPA 2010/s444(10) means that the JV sub 2 contributes 40 to the group-EBITDA for the JV Group.

### Applying the rules

	Tax-interest expense	Tax-EBITDA
JV parent	62	80
JV sub 1	20	56
JV sub 2	30	40
Total	112	176

Applying the fixed ratio rule to the JV group gives an [interest capacity allowance](#) of  $30\% \times 176 = 53$ . Therefore there is would be an interest restriction of 59.

The group figures are calculated as follows (before any further elections):

	Contribution to:		
	ANGIE	QNGIE	Group-EBITDA
JV parent	62	12	80
JV sub 1	20	20	56
JV sub 2	30	-	40
Total	112	32	176

The adjusted net group-interest expense (ANGIE) for the JV Group is 112, and so the fixed ratio debt cap does not limit the fixed ratio rule.

JV Group has a group ratio of  $32/176 = 18.2\%$ . This will not increase the interest allowance above the fixed ratio rule.

It may be advantageous in this situation to make a group ratio blended election if the non-qualifying investors have high group ratios themselves.

In the previous example if JV sub 2 made a loan to qualifying investor A which meant that qualifying investor A paid out interest of 50 to JV sub 2 the interest of 50 paid by investor A would not be considered to be an exempt amount. This is because:

JV has made a TIOPA10/s444 election.

JV sub 2 is a member of the JV worldwide group and is a creditor for the purposes of TIOPA10/s438 to Investor A.

Investor A is not a member of the JV worldwide group, it is not a third party to the JV worldwide group and it is a qualifying infrastructure company.

This treatment would not only apply to qualifying investors in the JV but to other related parties of the JV group that are not members of the JV group.



# **CFM96960 Interest restriction: Joint Ventures: Qualifying Infrastructure Company JV: Effect on other companies**

## **TIOPA10/S446(1)**

Ordinarily for a qualifying infrastructure company (QIC) company [tax-interest expense is exempt](#) where it is attributable to a creditor which is itself a QIC.

However, this rule is disapplied where the creditor is a member of the JV group and the debtor company is not also in the JV worldwide group.

This prevents the interest paid on a loan owed to the JV group outside of the JV group being an exempt amount if the company paying the expense is a related to the lender company.

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# CFM97110 Interest restriction: Public Infrastructure: Outline

## TIOPA10/PART10/CH8

Companies providing public infrastructure assets commonly have fairly steady cash flows and generate only a small profit margin over financing cost. Therefore, by their nature, they can be highly geared and would be likely to suffer an interest restriction as a result of the application of either the [fixed ratio method](#) or the [group ratio method](#).

The Organisation for Economic Cooperation and Development (OECD) recognised in their 2015 Final Report on Limiting Base Erosion Involving Interest Deductions and Other Financial Payments (Action 4) that, because of both the nature of public infrastructure assets and the close connection with the public sector, financing arrangements of companies providing such assets commonly present little or no base erosion or profit shifting risk. This is particularly the case where financing arrangements are provided by third parties (with no significant equity interest in the company) and if related income is subject to tax in the same territory as the interest expense is deductible.

Recognising this, and in order to ensure that private investment in public infrastructure is not deterred by unwarranted restrictions on the deductibility of [tax-interest expense](#), the rules include an alternative approach to limiting such deductions for companies that provide public infrastructure. This approach is based on the optional exclusion in the OECD report, and is intended to provide effective protection against base erosion using interest or similar expense. To use the alternative rules in Chapter 8, each company must meet a number of conditions and make an election to be a qualifying infrastructure company (QIC).

### Qualifying infrastructure companies and qualifying infrastructure activities

#### TIOPA10/S433

In order to be a [qualifying infrastructure company](#) a company must meet the following requirements.

- It must be [fully taxed](#) in the UK;
- all, or all but an insignificant proportion, of its [income](#) and [assets](#) must be referable to activities in relation to public infrastructure assets ([qualifying infrastructure activities](#)); and

- it must have [elected to be a QIC](#).

### **Public infrastructure assets**

Public infrastructure assets fall into two types:

- tangible assets forming part of the [infrastructure of the UK](#), which meet a public benefit test; and
- buildings (or part of buildings) that are [part of a UK property business and are let \(or sub-let\)](#) on a short term basis to unrelated parties.

Both types of asset must have, have had, or be likely to have an [expected economic life](#) of at least 10 years, and be recognised on the balance sheet of a member of the group of the QIC (which itself is [fully taxed](#) in the UK).

### **Effect of election**

If a valid election is made, [certain amounts](#) are excluded from being [tax-interest expense](#) of the company. In addition, some amounts of the QIC are to be [ignored or treated as nil](#) in calculating other figures for the Corporate Interest Restriction.

As a result of the reduction in tax-interest expense, a group's potential for restriction under the [fixed ratio method](#) and the [group ratio method](#) will be lower with a valid QIC election.

However, because of the exclusion of other amounts from the QIC from these calculations, the actual restriction could be lower or higher as a result of the QIC election.

### **Transitional rules**

[Transitional rules](#) apply to accounting periods beginning before 1 April 2018.

# CFM97120 Interest restriction: Public Infrastructure: Qualifying infrastructure activity

## TIOPA10/S436

To be a [qualifying infrastructure company](#) (QIC) the company must, among other things, meet the public infrastructure income test. This test depends on there being qualifying infrastructure activities, which are:

- the provision of a public infrastructure asset; or
- the carrying on of any other activity that is [ancillary to, or facilitates, the provision](#) of a public infrastructure asset.

For these purposes, provision includes the acquisition, design, upgrade, construction, conversion, improvement, operation or repair. The rules applying to the provision of public infrastructure assets also apply to their [decommissioning](#) (s448).

Public infrastructure assets fall into one of two categories, [infrastructure of the UK](#) and [certain buildings part of a UK property business](#). Assets in both categories must meet certain conditions to be considered public infrastructure assets.

# CFM97130 Interest restriction: Public Infrastructure: Public Infrastructure Asset

## TIOPA10/S436(2)-(4) and TIOPA10/S437(1)

To be a [qualifying infrastructure company](#) the company must, among other things, meet the public infrastructure income test. This test depends on there being qualifying infrastructure activities, which includes the provision of a 'public infrastructure asset'.

An asset is a public infrastructure asset if it meets all of the following conditions:

- it is, or is to be, a tangible asset forming part of the infrastructure of the UK, or the [UK sector of the continental shelf](#);
- it meets [the public benefit test](#);
- the asset has had, has or is likely to have, an [expected economic life of at least 10 years](#); and
- the asset meets the [group balance sheet test](#).

Tangible asset for the purposes of these conditions, has its ordinary meaning i.e. an asset which has a physical form, and is not a reference to an accounting term of tangible fixed asset.

In addition, there are separate rules which mean that [certain buildings within a UK property business](#) are also public infrastructure assets.

### Examples of infrastructure

Examples of infrastructure for these purposes are included in TIOPA10/S437(1) and include any of:

- water, electricity, gas, telecommunications or sewerage facilities;
- oil pipelines, oil terminals or oil refineries;
- railway facilities (including rolling stock), roads or other transport facilities;
- health or educational facilities;
- facilities or housing accommodation provided for use by members of any of the armed forces or of any police force;

- court or prison facilities;
- waste processing facilities; and
- buildings (or parts of buildings) occupied by any relevant public body.

This list is not intended to be exhaustive, but illustrative.

### **UK Sector of the Continental Shelf**

The UK sector of the continental shelf means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.

This comprises those areas of the sea bed and subsoil beyond the territorial sea over which the UK exercises sovereign rights of exploration and exploitation of natural resources.

#### **Example 1**

An offshore wind farm located 20 nautical miles to the east of the UK coast in the North Sea, whilst being outside the UK territorial waters (which extends at most 12 nautical miles from the coastline) would be considered infrastructure of the UK, as it would be within the UK's continental shelf.



# CFM97140 Interest restriction: Public Infrastructure: Public benefit test

## TIOPA10/S436(2)(b)&(3)

To be a [qualifying infrastructure company](#) the company must, among other things, meet the public infrastructure income test. This test depends on there being qualifying infrastructure activities, which includes the provision of a public infrastructure asset.

To be a public infrastructure asset the asset must meet the public benefit test. This test is met by a tangible asset which is infrastructure of the UK where it is, or is to be:

- procured by a relevant public body; or
- used in the course of a regulated activity.

### Procured by a relevant public body

Infrastructure of the UK is procured by a relevant public body where the [relevant public body](#) contracts with a company to provide that infrastructure in exchange for consideration.

### Example 1

A NHS Trust invites bids for a contract to design, build, finance, maintain and operate a new hospital over a period of 40 years. The successful bidder will enter the contract in exchange for consideration payable over that 40 year term. For the purposes of the public benefit test, the hospital (health facility) has been procured by a relevant public body (a health service body within the meaning given by CTA09/S986).

### Used in the course of a regulated activity

An asset is used in the course of a regulated activity if its use is:

- regulated by an infrastructure authority; or
- could be regulated by an infrastructure authority if the authority exercises any of its powers.

Infrastructure authorities for the purposes of Chapter 8 are identified in S437(2).

## **Example 2**

The owner and operator of the majority of the rail network has the price it can charge its customers set by the Department for Transport. It is therefore regulated by an infrastructure authority.

# CFM97150 Interest restriction: Public Infrastructure: Expected economic life

## TIOPA10/S436(2)(c) & (5)(c)

Expected economic life is a term specific to testing for [qualifying infrastructure activity](#) and is applied to both [infrastructure of the UK](#) and certain [buildings which are part of a UK property business](#).

To be considered a public infrastructure asset an asset (which may be a building or part of a building) must have, have had, or be likely to have an expected economic life of ten years or more. This ten year limit is not limited by reference to the current owner.

### Example 1

Company A constructs temporary accommodation for military barracks. It is expected at construction these will be unsuitable for use in 5-7 years. This accommodation has an expected economic life (EEL) of less than 10 years and would not be considered Infrastructure of the UK.

### Example 2

Company B constructs an assault course at a different military barracks. This is considered to have useful life of 25 years. It has an EEL of greater than 10 years in Company B's hands.

Company C acquires the assault course 20 years into its use. Even if this asset will cease to be of use in 5 years, it will still be considered an asset which had an EEL of greater than 10 years in Company C's hands.

# CFM97160 Interest restriction: Public Infrastructure: Group balance sheet test

## TIOPA10/S436(2)(d),(5)(d),(10)

In order to be a [qualifying infrastructure company](#) the company must, among other things, meet the public infrastructure income test. This test depends on there being a company which carries out qualifying infrastructure activities. In particular, this would include the provision of a public infrastructure asset.

To be a public infrastructure asset an asset (whether part of UK infrastructure, or a building or part of a building within a UK property business) must pass the group balance sheet test in respect of the company carrying out the qualifying infrastructure activities.

The group balance sheet test applies at each point in time. It requires that the asset is recognised on the balance sheet of the company, or a company within the [worldwide group](#), or would be recognised on such a balance sheet if one was drawn up at that time. The company which recognises the asset must be subject to UK Corporation Tax in respect of all sources of its income. As such it must not have:

- made an election to exempt its profits or losses from an overseas permanent establishment (under CTA09/S18A) which has effect for the accounting period spanning that time; nor
- made a claim for double taxation relief (under TIOPA10/Part 2/Chapter 2) for that same accounting period.

### Example

An gas interconnector (a physical link allowing the transfer of gas across borders), connecting the UK transmission network, with a mainland European countries network is owned by a UK company subject to corporation tax on all of its income. A European tax authority considers that 50% of the interconnector is considered a permanent establishment in its territory and subjects a similar proportion of income to its own corporation tax in its territory. If the UK company claims relief for this double taxation, the interconnector cannot be considered a public infrastructure asset.

# CFM97170 Interest restriction: Public Infrastructure: Buildings within UK property business

## TIOPA10/S436(5)-(9))

A building, or part of a building, may be a public infrastructure asset of a company if the company, or another company within the worldwide group, carries on a UK property business including the building or part of the building and;

- the building or the part of the building is, or is to be, [let on a short-term basis](#) to persons, who at that time, are not related parties of the company or companies;
- the building or the part of the building has had or is likely to have an [expected economic life of at least ten years](#); and
- the building or the part of a building meets the [group balance sheet test](#).

## UK Property Business

A UK property business is described in the Property Income Manual at [PIM1020](#).

### Let on a short-term basis

A building, or part of a building, is let to a person if that person is entitled to the use of the building or part under a lease or other arrangement. This let (or other arrangement) is considered to be short term if it has an effective duration of less than fifty years and is not considered a finance arrangement as defined by CTA10/PART16/CH2.

For the purposes of this test, references to let and leases can be read as including sub-let and sub-leases. The on a short term basis covers a lease or other arrangement, TIOPA 2010/s436(6). Other arrangements can cover licence income from the occupation of real estate where this would constitute UK property business income.

#### Example 1

A university contracts with a special purpose company (SPC) to provide student accommodation. The contract for construction of the student accommodation is between the SPC and a construction company, which also owns 75% of the SPC's ordinary share capital through a related party of the

construction company. The university owns the remaining 25% of the SPC's ordinary share capital.

The completed student accommodation is leased from the SPC to the university for 60 years in return for rent over that period. While the building forms part of a UK property business of the SPC, this is neither a short term let, nor to an unrelated party.

However, the university then lets parts of the accommodation to students during term times each academic year. These are short term (sub) lets to persons who are in general not related to the SPC. As such the student accommodation is a public infrastructure asset in relation to the SPC.

In example 1 the assumption is that university accommodation is let out to students for the whole of the year. Often university accommodation is used for other purposes outside term time. The income generated from these activities can be necessary to ensure the economic viability of the UK property business providing the student accommodation. Where these additional revenue streams are clearly a secondary function of the building then these other activities could be considered to be ancillary to the UK property business.

### **Example 2: Ground Rents**

Company A holds the freehold of a property and has granted a 199 year lease to Company B in return for a ground rent of £2,000 per year. Company B grants a 20 year lease to a party unrelated to either company. It does not matter whether Company A is related to Company B.

In this case both A and B carry on a UK property business of including the property. For both companies the test in s436(5)(b) can be met by virtue of the 20 year lease granted by Company B, in accordance with the criteria under TIOPA 2010/s436(7) and (9).

Therefore, the property can be a public infrastructure asset in relation to both A and B. The ground rent would not prevent Company A from being a qualifying infrastructure company, as it is income from the provision of public infrastructure asset, which is a qualifying infrastructure activity.

### **Example 3: Sale of Freehold or granting long leasehold to landlord**

A company that is an existing QIC holds the freehold of a large part of a city centre. It currently lets the buildings on this site to third parties on short term lets as part of a property business. The property consists of a mix of commercial and residential lettings.

The company identifies some of its residential units for sale to a landlord. These are sold either by disposing of the freehold or granting a long term

lease of about 200 years. The landlord continues to let out the property to third party tenants on short term leases.

The consideration for the disposal of the freehold or the premium on granting the long term lease is a chargeable gain assuming that the company is not a property trader. The gain is not considered for the purposes of the public infrastructure income test at TIOPA 2010/s433(2)(a). The profits from the disposal or the premium received on the long lease will not taint the QIC status of the company. If ground rents received as part of the disposal of a long term lease these will lie within the definition of TIOPA 2010/s433(2)(a) so will be income derived from qualifying infrastructure activities. This is because the property is still being let to tenants on short term leases.

**Example 4: Sale of Freehold or granting long leasehold to owner-occupiers**

If, in the previous example, the residential units are sold on to owner occupiers, then on the date of the disposal they are no longer public infrastructure assets. The assumption is made that the company is not a property trader. If ground rents received from the granting of a long term lease are significant they could taint the QIC status of the company.

However, if the disposal proceeds are used to redevelop some of the remaining rental units, then it is possible that the sale of the residential properties could be considered necessary to facilitate the provision of public infrastructure assets. In this case receipt of the ground rents would be income from a qualifying infrastructure activity. This would depend on the facts on circumstances. There would have to be a clear link that the premiums and ground rent received were for the purposes of the development of the parts of the site that were provided for infrastructure activities. Please refer to CFM97180 for further guidance and in particular example 3 on that page.

# **CFM97180 Interest restriction: Public Infrastructure: Ancillary to, or facilitates, provision**

## **TIOPA10/S436(1)(b)**

To be a qualifying infrastructure company the company must, among other things, meet the public infrastructure income test. One of the permitted categories of income is that deriving qualifying infrastructure activities carried on by the company. The primary qualifying infrastructure activity is the provision of a public infrastructure asset. Qualifying infrastructure activities also include activities which are either ancillary to, or facilitate, that provision.

### **Example 1**

An operator is licensed to upgrade and operate an airport, and by virtue of this license, it is considered to be using a public infrastructure asset in a regulated activity. The operator holds a leasehold over the airport and surrounding land to enable it to carry out its activities. The licensor agrees the operator should have the right to sub-lease retail units in the terminal, buildings to a hotel chain and land to a car park operator.

Whilst these subsidiary activities might form a significant part of the income generating activities of the operator, none of them would be provided if there was no airport. They could be considered to facilitate the provision of the airport through making its upgrade and operation economically viable. If so, these activities will be qualifying infrastructure activity.

### **Example 2**

A private finance initiative (PFI) hospital contract may be bid for on the basis the operator is granted a leasehold over all or part of the hospital site, and has the right to sub-lease retail outlets for use by patients and visitors.

The income generated from these sub-leases will be insignificant compared to the income generated from the provision of a hospital, but these retail outlets are a necessary but ancillary function of the facility. As such, rental income from these leases will be income from a qualifying infrastructure activity.

## **Ancillary and facilitative within UK property groups**

Projects that provide buildings that are public infrastructure assets may be subject to “section 106” obligations under the Town and Country Planning Act 1990. They may have also undertake other activities that facilitate the



provision of public infrastructure assets by making a project as a whole economically viable.

Where a business is unsure whether an activity is ancillary to or facilitates the provision of a public infrastructure asset it can apply to HMRC for a non-statutory clearance.

Whether an activity is facilitative or ancillary to public infrastructure assets depends upon the specific facts and circumstances. The following examples are illustrative of activities that may fall into one of these categories.

### **Example 3: Providing funding for the infrastructure assets**

Where a small proportion of a development consists of properties built for sale it may be the case that the proceeds from the for-sale properties are necessary for the funding of the for-rent investment. For the development and sale of these properties to be considered to facilitate the provision of for-rent public infrastructure assets there must be a clear link from the for-sale development to the for-rent investment.

It is to be expected that all the proceeds from the sale of the properties would be reinvested in the infrastructure assets or used to repay short-term loan. It would also be expected that the scale of the for-sale development would be significantly smaller than that of the for-rent assets.

If the provision of for-sale housing is itself one of the main objectives of the scheme it can no longer be said to be merely facilitative. To ascertain whether the provision of for-sale housing is itself a main objective of the scheme it may be necessary to examine the planning documents for the development as a whole.

### **Example 4: S106 Requirements Enablement Schemes**

It is very common that S106 requirements include a requirement for the property developer to build and sell a certain number of affordable residential units. These are known as enablement schemes.

Where a company is required to build enablement housing as part of a planning requirement under a S106 agreement, and is required to sell this enablement housing after the development, it is likely that the motive for entering the enablement transactions is to obtain planning consent for the main assets of the development. If this is the motive and the main assets are public infrastructure assets then the provision of the enablement housing is likely to facilitate the provision of public infrastructure assets so that income from the enablement transactions is income from a qualifying infrastructure activity.

There are many different fact patterns that can cover this situation. The enablement scheme does not necessarily occur on the same site or within the same company. However, it would usually occur in the same vicinity. There may be more than one development that is part of the section 106 agreement and this may include more than one company in the group. In these situations the group may look within its own investment portfolio to locate a property that could be developed as part of the enablement scheme. It may have to seek out a new site to provide this enablement development.

# CFM97190 Interest restriction: Public Infrastructure: Qualifying infrastructure company

## TIOPA10/S433

For a company to be a qualifying infrastructure company (QIC) it must meet four conditions throughout an accounting period. It must:

- meet the [public infrastructure income test](#);
- meet the [public infrastructure assets test](#);
- be [fully taxed in the UK](#); and
- have made a valid [election](#) to this exemption, which is in effect.

### Effect of being a QIC

If a company is a QIC, certain amounts of interest and other finance costs payable are excluded from its [tax-interest](#) expense. In addition, further [amounts will be ignored or treated as nil](#) for the purposes of the [fixed ratio method](#) and [group ratio method](#).

### Transitional rules

[Transitional rules](#) provide that a company may be a qualifying infrastructure company for accounting periods beginning before 1 April 2018 despite not having met all four conditions. In such cases, adjustments are made on a just and reasonable basis to the amounts that are excluded.

# CFM97200 Interest restriction: Public Infrastructure: The income test

## TIOPA10/S433(2)-(4)

The first condition required to be met in order to be a [qualifying infrastructure company](#) (QIC) is the public infrastructure income test. This is a test of income recognised for accounting purposes.

To meet the public infrastructure income test, all or all but an insignificant proportion of a company's income for an accounting period must derive from:

- [qualifying infrastructure activities](#) carried on by the company,
- shares in a QIC, or
- loan relationships or other financing arrangements to which the only other party is a QIC.

For the purposes of the public infrastructure income test:

- Activities carried on by a company include those carried on by a [partnership or other transparent entity](#) in which the company has an interest (s447);
- Interest generated by cash reserves, held as a requirement of unrelated lenders, can be considered to facilitate provision of a public infrastructure asset and therefore to arise from a qualifying infrastructure activity;
- Interest generated by cash reserves held as working capital can be considered to facilitate the provision of a public infrastructure asset. It may be necessary to hold such an asset to provide for expenditure in the build phase of a project where no income is being generated. Considering whether such income is ancillary the cash reserves held should not be excessive compared to the working capital requirements of the project.
- Income arising from shares in a [decommissioning fund](#), or loan relationships or other financing arrangements to which a decommissioning fund is party, is ignored (s448).
- If a QIC does not have any income in a period it is treated as having passed the public infrastructure income test.

## Meaning of insignificant

The test of insignificance is both an absolute and relative test. Where an amount of income is insignificant in absolute terms then it is ignored. Otherwise, income is ignored if it constitutes an insignificant proportion of the company's total income in that accounting period.

Whether an amount is insignificant will depend on the particular facts and circumstances. An amount is unlikely to be insignificant if it would be of relevance to shareholders or lenders. Income is more likely to represent an insignificant proportion of the total, or be insignificant in absolute terms, if its absence would make no difference to the market value of the company, and if it is merely happenstance that the company earns the income.

### Example

A company is set up as a special purpose company (SPC) to bid for a private finance initiative (PFI) contract to design, build, finance, maintain and operate a waste facility.

In its first accounting period from incorporation, costs are incurred by the SPC during the tender process run by a local authority. The SPC is not performing any income generating activity at any point in this period and no income is recognised for accounting purposes. The public infrastructure income test is passed.

In its second accounting period, the SPC recognises income of £100m in respect of construction of a public infrastructure asset under the PFI contract it has successfully bid for. This is considered income derived from a qualifying infrastructure activity. The company is also required to hold cash reserves as a condition of its borrowing from its senior lenders. Interest is generated on these cash reserves totalling £500k in this second accounting period, which is insignificant in relative terms. The public infrastructure income test is passed in this period.

In the third accounting period, the waste facility is complete. The SPC recognises £80m from its PFI contract with the local authority. It also generates £4m interest income from lending to its shareholders. The latter is not considered derived from a qualifying infrastructure activity. The £4m is significant both in absolute terms and relative to the £80m generated from its PFI contract. Consequently, the public infrastructure income test is failed.

The meaning of insignificant for these purposes can be altered by [a group infrastructure election](#).

# CFM97210 Interest restriction: Public Infrastructure: The asset test

## TIOPA10/S433(5)-(9)

The second condition required to be met in order for a company to be a [qualifying infrastructure company](#) (QIC) is the public infrastructure asset test. This is a test of assets recognised for accounting purposes.

To meet the public infrastructure assets test, all, or all but an insignificant proportion, of the total value of the company's assets recognised in a balance sheet on each day of an accounting period must derive from:

- tangible assets that are related to [qualifying infrastructure activities](#),
- service concession arrangements in respect of assets that are related to qualifying infrastructure activities,
- financial assets to which the company is a party for the purpose of qualifying infrastructure activities carried on by the company or another associated QIC,
- shares in a QIC, and
- loan relationships to which the only other party is a QIC.

Value refers to the value of assets as recognised in a balance sheet included within the financial statements of the QIC or the value that would be recognised if financial statements were drawn up on that day.

Tangible assets, or service concession arrangements in respect of assets, are related to qualifying infrastructure activities if those assets are:

- public infrastructure assets ([infrastructure of the UK](#) or [certain buildings within a UK property business](#)) provided by the company;
- other tangible assets used in the course of a qualifying infrastructure activity carried on by that company or a by QIC which is a member of the same worldwide group.

## Service concession arrangements

Service concession arrangement has the meaning given by international accounting standards (TIOPA10/S494).

IFRIC12 issued in 2006 applies to periods beginning on or after 1 January 2008, to give guidance on the accounting by operators of public-to-private service concession arrangements. A service concession arrangement for these purposes is an arrangement in which the grantor is a government or other public body (for example, an NHS trust) which contracts with a private sector operator to develop (or upgrade), operate and maintain the grantor's infrastructure assets such as roads, bridges, tunnels, prisons or hospitals. The grantor controls or regulates what services the operator must provide using the assets, to whom, and at what price, and also controls any significant residual interest in the assets at the end of the term of the arrangements.

The definition of a service concession arrangement under FRS 102 is closely aligned with the IFRIC 12 concept of service concession arrangement. If a company applies service concession accounting treatment under FRS 102 then this accords with the definition of "service concession arrangements" as interpreted in TIOPA 2010/s494. This also applies to the transition arrangements where a choice is made to continue the existing service concession accounting treatment that was taken out before the transition to FRS. In either case the arrangements would constitute a "service concession arrangements".

For the purposes of the public infrastructure asset test:

- assets deriving from service concession arrangements may be recognised as finance assets or intangible assets on the balance sheet of a QIC;
- where a company's interest in a [partnership or other transparent entity](#) is recognised on its balance sheet, this interest may be deemed to fall within the above categories of assets, depending on the nature of the assets recognised on the partnership or transparent entity's balance sheet (s447);
- shares in a [decommissioning fund](#), or loan relationships or other financing arrangements to which a decommissioning fund is party, are ignored (s448).
- Where a company recognises no assets whatsoever on its balance sheet for an accounting period (and would not for a balance sheet drawn up on any day of that period), the public infrastructure asset test is considered passed for that period. This also includes situations where a company has assets where it is reasonable to regard the value of the assets as insignificant. For example if a dormant company holds a £10 cash asset it is reasonable to regard this asset as insignificant and as such the company is regarded as meeting the public infrastructure assets test.

### **Example 1**

Company B is a wholly owned subsidiary of Company A. Company B constructed a waste processing facility, commissioned by a local authority and from this provides waste processing services to the local authority. As the infrastructure asset was procured by a relevant public body and Company B's income and assets relate to a qualifying infrastructure activity then Company B will be able to qualify as a QIC.

Company A's only assets are shares in Company B, a loan asset recognising a loan to Company B, and also a tangible asset representing land which it has leased to Company B (and upon which Company B has constructed the waste processing facility). As Company A's shares in Company B are in a QIC then it passes the income and assets test on these shares. . Similarly the loan debtor asset is from Company B and as Company B is a QIC its passes the income and assets test on this loan debtor asset.

This land asset that is held by Company A is used in the course of the qualifying infrastructure activity carried on by Company B. This land asset will also be on the balance sheet of Company A and the worldwide group consolidated accounts. Therefore Company A would pass the public infrastructure asset test with respect to all of its assets. As its income is derived from shares and a loan from Company B, a QIC and the rental income on the land is derived from a qualifying infrastructure activities Company A will also be a QIC.

### **Meaning of insignificant**

The test of insignificance is both an absolute and relative test. Where the value of an asset is insignificant in absolute terms then it should be ignored. Otherwise, assets are ignored if their value represents an insignificant proportion of the total value of the assets which are or would be recognised in the balance sheet of the company on that date.

Whether an amount is insignificant will depend on the particular facts and circumstances. An amount is unlikely to be insignificant if it would be of relevance to shareholders or lenders. Assets are more likely to represent an insignificant proportion of the total, or be insignificant in absolute terms, if their absence would make no difference to the market value of the company, and if it is merely happenstance that the company holds the assets.

### **Example 2**

A group company (Holdco) holds shares and loans in ten companies incorporated as special purpose companies ('SPCs') to each hold an investment property. For the purposes of the example, the value of the shares



and loans recognised on the balance sheet of Holdco is attributable equally amongst its ten subsidiaries. Nine of the companies are qualifying infrastructure companies, by virtue of holding buildings which are part of a UK property business which are let to unrelated persons on a short term basis. One is not. Holdco would fail the public infrastructure asset test.

## Temporary periods

A company will not fail the public infrastructure asset test for an accounting period if it is failed to meet the conditions for an insignificant period. The period would be considered insignificant if the conditions were breached as a result of circumstances which only existed and were only intended to exist for a temporary period of insignificant duration.

### Example 3

Just before the beginning of an accounting period, Holdco (from the above example) disposes of the company which was not a qualifying infrastructure company. It distributed the significant proceeds to its shareholders after the first week of the accounting period. Holdco would meet the conditions in the public infrastructure asset test in this period, but for the significant cash balance representing the proceeds of the disposal. As this was only held and intended to be held for an insignificant period, Holdco can still be considered to pass the public infrastructure asset test.

## Group elections

The meaning of insignificant for these purposes can be altered by a [group infrastructure election](#).

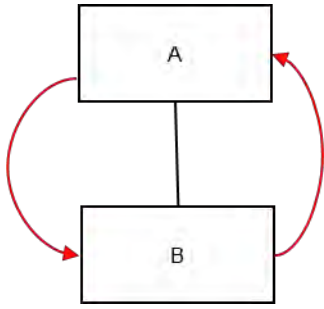
## Circularity

Where one company hold shares and/or debt issued by another company, the first company can only be a QIC if the second company is. If the second company has also lent money to the first company, it can only be a QIC if the first company is. Providing both companies meet any other relevant conditions, HMRC will regard them both as eligible to be QICs.

### Example 4

Company B holds a public infrastructure asset on its balance sheet, and carries out a qualifying infrastructure activity. It also makes a loan to its parent, Company A.

Company A's only assets are shares in, and a loan to Company B.



The loan from Company B to Company A is not insignificant relative to the other assets of Company B and, if Company A was not a QIC, would mean Company B could not qualify as such either.

This apparent circularity is not considered to prevent either company to qualify as QIC, so long as all other conditions necessary to qualify are met and elections to be a QIC are made.

# CFM97220 Interest restriction: Public Infrastructure: Fully taxed in the UK

## TIOPA10/s433(11)-(12)

The third condition a company must meet to be a [qualifying infrastructure company](#) is that it is fully taxed in the UK. This means every activity carried on at any time in the accounting period must be within the charge to UK corporation tax. Unlike the public infrastructure income test this test also includes chargeable gains. Any chargeable gains made by the company must be fully taxed in the UK for this condition to be met.

Furthermore it must not have:

- made an election to exempt its profits or losses from an overseas permanent establishment (under CTA09/S18A) which has effect for that accounting period; nor
- made an claim for double taxation relief (under TIOPA10/Part 2/Chapter 2) for that same accounting period.

### Non-resident companies

There is a relaxation for non-resident companies, in that income from a source that could be reasonably regarded as insignificant will not in itself mean the test is failed.

# CFM97230 Interest restriction: Public Infrastructure: Decommissioning and decommissioning funds

## TIOPA10/S448

### Decommissioning

The provision of a public infrastructure asset for a [qualifying infrastructure activity](#) can involve decommissioning costs, such as costs incurred demolishing an asset, or putting it out of use. The rules in Chapter 8 apply to the decommissioning of an asset just as they do to its provision.

### Example

A nuclear power plant has been built and operated for 65 years and is coming to the end of its life. Throughout a period whilst the plant is in use, and for a period following the end of its economic life, the operator has to dispose of spent fuel. In addition to this the actual plant has to be gradually dismantled over a period of 40 years, as it is decontaminated. For the purposes of Chapter 8, disposing of such spent fuel, and dismantling of the plant are considered equivalent to 'provision'; being activities which the operator is obliged to undertake as a result of the other aspects of 'provision' of such a plant.

### Decommissioning funds

Where decommissioning creates significant obligations on an operator, it is possible a decommissioning fund will be established. A decommissioning fund for the purpose of Chapter 8 is a company which holds particular investments for the sole purposes of funding the decommissioning of public infrastructure assets (and is prevented from using the proceeds from disposal of these investments, or income generated from them, for any other purpose apart from returning surplus funds).

A company can ignore income from, or certain investments in, a decommissioning funds for the purpose of considering whether it has passed the public infrastructure income and public infrastructure asset tests in an accounting period. The decommissioning fund itself is regarded as a qualifying infrastructure company.

# CFM97240 Interest restriction: Public Infrastructure: The election

## TIOPA10/S433(1)(d), S434, S435

A company cannot be a [qualifying infrastructure company](#) (QIC) in an accounting period unless it makes an election to do so, and that election has effect for the accounting period. There is no prescribed form for the election. If the group has a Customer Compliance Manager (CCM), elections can be sent to them, otherwise see the [CIR internet page](#) for where to send elections.

### Timelimit

Such an election must be made before the end of the accounting period to which it is to have effect. The exception to this is for accounting periods ending before 1 April 2018, where the election can be made any time before that date ([elections for a transitional period](#)).

### Example 1

A company meets the public infrastructure income test and public infrastructure asset test and is fully taxed in the UK in the 12 month accounting periods ended 31 December 2019, 31 December 2020 and 31 December 2021.

It makes an election to be a QIC on 31 December 2020. As such, it will not be considered a QIC for the accounting period ended 31 December 2019, but will be for the accounting periods ended 31 December 2020 and 31 December 2021.

Once the election has been made, it will continue to have effect for all subsequent accounting periods after the first it has effect for. This is subject to:

- the company not failing any other condition it must meet to be a QIC (the public infrastructure asset test, the public infrastructure income test and the full taxed in the UK condition); and
- the company not revoking that election.

### Anti-cycling provisions

A company must revoke any election to be a QIC before the first day of the first accounting period in which it is not to have effect. In any case, the

revocation cannot have effect in relation to any accounting period which begins less than five years after the first day of the first accounting period in which the election to be a QIC had effect (s434(3)).

Once an election has been revoked by a company, a new election to be a QIC cannot have effect for any accounting period beginning less than five years after the first day of the accounting period from which the revocation had effect (s434(4)).

### **Example**

A company makes an election on 31 December 2018 to be a QIC. It meets the other conditions necessary, so the election has effect for the 12 month accounting period ended 31 December 2019. It subsequently brings forward its balance sheet date to 30 June 2020.

On 1 January 2023 the company revokes its election. This cannot have effect for the 12 month accounting period ended 30 June 2024, as this began (on 1 July 2023) less than five years after the existing election had begun to have effect (1 January 2019). The revocation must be prospective; as such the earliest it can have effect is the 12 month accounting period ended 30 June 2025.

The earliest another election to be a QIC could have effect would be for the 12 month accounting period ended 31 June 2030, if the election was made prior to 1 July 2029.

## **Consequences of failing the QIC conditions**

A company may have a valid election in operation but in an accounting period may fail to meet the public infrastructure income test, public infrastructure assets test or is not fully taxed in the United Kingdom in the accounting period. In this accounting period the company has ceased to meet the definition of being a QIC.

The consequence is that the exemptions and provisions that affect a QIC no longer apply. Tax-interest exemptions that would have previously qualified as exempt amounts no longer do so as prescribed by TIOPA 2010/s438. However this also means that the provisions at TIOPA 2010/s440 to s442 no longer also apply. This allows the tax-EBITDA of the company to contribute to the tax-EBITDA of the worldwide group. Amounts of adjusted net group-interest expense, qualifying net group-interest and group-EBITDA that were previously left out of account can now be included in the worldwide group calculation. Thus, the company will be included in the worldwide group calculations of the fixed ratio and the group ratio.

If in the following accounting period, the QIC tests are no longer failed, then the company will be back within the definition of being a QIC. This means that the chapter 8 provisions will again apply to the company.

### **QIC's Deliberately Failing the QIC tests**

A worldwide group may identify a tax advantage for the group if one of more of its QIC subsidiaries were to be considered to be outside the Chapter 8 provisions in a specific accounting period. A company may have wished to revoke the QIC election, but it may be out of time or prohibited from revoking the election in that period. The company cannot choose to deliberately fail the QIC test in these circumstances. If it did try to do so there be recourse to the {anti-avoidance provisions} which would reverse the effect of any tax advantage being sought.

#### **Example**

A company deliberately chooses to introduce a significant amount of income or assets related to non-infrastructure activity. In these circumstances the anti-avoidance provision will be applied to counteract the tax advantage by making such adjustments that are just and reasonable.

## **Transfer of an infrastructure business in the same worldwide group**

Where a QIC transfers to another company in the same worldwide group, a business or a part of a business that consists of a qualifying infrastructure activity, but the transferee has not made an election to be a QIC which has effect for the accounting period of the transfer, the transferee is treated as if had made the election that the transferor had (s434(5)).

#### **Example**

Company A made an election on 31 December 2018 to be a QIC, which had effect for the 12 month accounting period ending 31 December 2019. On 1 June 2020 it transferred its business, which is a qualifying infrastructure activity, to Company B which is in the same worldwide group as Company A.

Company B has a 31 December balance sheet date. It was incorporated on 1 January 2020 and was dormant until the business of Company A was transferred in. It had not previously made an election to be a QIC, however it will be considered to have inherited Company A's 31 December 2018 election. It should be deemed a QIC for the accounting period ended 31 December 2020, and would be able to make a revocation which could have effect from the 12 month accounting period ended 31 December 2024.

## **Fully taxed in the UK**

One of the conditions necessary to be a QIC in an accounting period is that a company is [fully taxed in the UK](#). This includes two specific requirements that the company has not:

- made an election to exempt its profits or losses from an overseas permanent establishment (under CTA09/S18A) which has effect for that accounting period; nor
- made an claim for double taxation relief (under TIOPA10/Part 2/Chapter 2) for that same accounting period.

Once an election to be a QIC has effect in an accounting period then the company is not permitted to make either of these claims in respect of that period.

## **Group elections**

The effect of an election to be a QIC can be modified by a [group infrastructure election](#) which allows the conditions to be assessed over a number of linked companies.



# CFM97250 Interest restriction: Public Infrastructure: Elections for a transitional period

## F(No.2)A17/SCH10/PARAS32-33

Transitional rules apply in the case of accounting periods beginning before 1 April 2018. These have two effects:

- An election to be a [qualifying infrastructure company](#) (QIC) can be made in respect of such accounting periods at any time prior to 1 April 2018, and have effect. i.e. the election does not have to be made in the accounting period in question.
- A company can fail either the public infrastructure income or public infrastructure asset tests (or both) in such accounting periods, and an election to be a QIC can still have effect. This is subject to the company being able to meet each of those tests in a notional or actual accounting period of at least three months length which includes 1 April 2018.
- Where a company qualifies as a QIC for an accounting period by this provision, the amounts in respect of the company which are excluded from tax-interest, tax-EBITDA, group-interest and group-EBITDA under s438, s440, s441 and s442 are reduced on a just and reasonable basis.

### Example

A group company (Holdco) holds shares and loans in ten companies incorporated as special purpose companies ('SPCs') to hold individual investment properties. Holdco and the SPCs all have 12 month accounting periods ending 31 May 2017 and 31 May 2018.

For the purposes of the example, the value of the shares and loans recognised on the balance sheet of Holdco, as well as its income, are attributable equally amongst its ten subsidiaries. Seven of the companies are qualifying infrastructure companies, by virtue of holding buildings within a UK property business which are let to unrelated persons on a short term basis. However, three do not qualify. Holdco would therefore fail the public infrastructure asset test in the accounting periods ended 31 May 2017 and 31 May 2018.

Nonetheless, Holdco and each of the seven qualifying infrastructure companies make an election on 31 January 2018 to be QICs. On the same day, Holdco disposes of its shares and loans in the three subsidiaries which

were not qualifying infrastructure companies. After this date it only holds assets and accrues income which would allow it to pass the public infrastructure income and asset tests.

Considering Holdco:

- although the accounting period ended 31 May 2017 has ended, the election was made before 1 April 2018 and is therefore still valid for both periods;
- the company would pass the public infrastructure income and public infrastructure asset tests for a deemed accounting period running from 1 February 2018 to 30 April 2018 and as such it can be a QIC for the accounting periods ending 31 May 2017 and 31 May 2018 under the transitional rules;
- the amounts excluded in respect of Holdco from tax-interest, tax-EBITDA, group-interest and group-EBITDA are reduced by three tenths in respect of the accounting period ended 31 May 2017;
- the amounts excluded in respect of Holdco from tax-interest, tax-EBITDA, group-interest and group-EBITDA are reduced by three tenths in respect of eight months of the accounting period ended 31 May 2018; assuming income accrues uniformly throughout the accounting period this means that those amounts would be reduced by 20%.

# CFM97260 Interest restriction: Public Infrastructure: Joint elections modifying the effect of an election to be qualifying infrastructure company

## TIOPA10/S435

Two or more qualifying infrastructure companies, which are members of the same [worldwide group](#), may make a joint election so to apply the infrastructure rules to them collectively.

In particular, a joint infrastructure election:

- modifies the [meaning of 'insignificant' for members](#) for the purposes of the [public infrastructure income test](#) and [public infrastructure asset test](#);
- means where one of the members of a group election fails a condition necessary to be a [qualifying infrastructure company](#), [all members of the group election are deemed to fail](#) that condition; and
- may modify the time period which applies before a company can revoke its election to be a QIC ([the anti-cycling provisions](#)).

Such an election has no effect other than described above.

A joint infrastructure election has effect from a date specified in that election.

The election may:

- Be revoked jointly by the members of the election, and this will have effect from a date specified in that revocation; or
- Cease to have effect for one (or more) members of the election if they give notice to HMRC and to the other members of the joint election, and specify the date they intend their withdrawal to have effect.

The date specified in an election, revocation or notice cannot be before the date on which it is made or given.

# CFM97270 Interest restriction: Public Infrastructure: Meaning of insignificant for members of a joint election

## TIOPA10/S435(5)

Where a company has made an election to be a [qualifying infrastructure company](#) which has effect for an accounting period, but it is also a member of a [joint infrastructure election](#) which has effect for that same accounting period, in determining whether something is insignificant each company in the joint election is deemed to have all the income and assets of their fellow members.

### Example

Assumed facts:

- Company A has two wholly owned subsidiaries, Company B and Company C.
- Company A has no other assets than its shares in these companies, and no income other than dividends receivable as a result of holding these shares.
- Company B's only assets are shares in ten special purpose companies holding qualifying infrastructure companies. Its only income is the dividends receivable as a result of its holding these shares.
- Company C has two assets. One, a waste plant, has been constructed as a result of a contract with a local authority to collect and process household waste – the capacity of this plant is limited to the waste it has to collect under this contract. The second, a brick factory, has been constructed by C such that it can seek out alternative commercial contracts.

In isolation, Company C would fail the public infrastructure income and assets test in the twelve month accounting period ending 31 December 2019, on the basis that its commercial manufacturing operations form approximately 10% of its income and assets for that period.

Company B would pass these same tests for that period, on the basis all of its income and assets derive from shares in qualifying infrastructure companies.

However, if both Company B and Company C made elections to be qualifying companies, and they make a joint infrastructure election, both could pass the

public infrastructure income and asset tests. Company C's income and assets from its commercial manufacturing operations would be insignificant relative to Company B and its subsidiaries.

# CFM97280 Interest restriction: Public Infrastructure: One fails, all fail effect for members of a joint infrastructure election

## TIOPA10/S435(6)-(7)

Where one company, which is a member of a joint infrastructure election under s435, fails a condition necessary to be a [qualifying infrastructure company](#) (QIC) for an accounting period all other members of the joint election are treated as failing those tests (the 'one fails, all fails' effect).

However, the other members of joint election are only treated as failing those tests for so much of their accounting period in which the joint election has effect, and also in which the failing company has failed the condition necessary to be a QIC (the deemed failed period).

### Example

Company X, Y and Z are members of a group.

- X has a 12 month accounting period ending 30 June 2019.
- Y has a 12 month accounting period ending 30 September 2019.
- Z has a 12 month accounting period ending 31 December 2019.

Each has made an election to be a QIC which was effective for their accounting periods ending in 2019. They made a joint infrastructure election together, which is effective from 1 April 2019.

	2018						2019															
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec				
X	[Bar from Jul 2018 to Jun 2019]																					
Y				[Bar from Oct 2018 to Sep 2019]																		
Z							[Bar from Jan 2019 to Dec 2019]															

In May 2019 Company X acquires an asset which causes it to fail the public infrastructure asset test. Company X is therefore not a QIC for its accounting

period ending 30 June 2019. Company X sells the asset again on 30 June 2019 and qualifies as a QIC for its accounting period ended 30 June 2020.

The deemed failed period starts when the joint infrastructure election became effective on 1 April 2019 and ends on 30 June 2019. Company Y and Z are treated as if they were not QICs for deemed accounting periods running from 1 April 2019 to 30 June 2019.

X	Whole accounting period of X fails condition to be qualifying infrastructure company				XXXXXXXX							
Y				Not failed because not relevant times		Fails under s.435(6)	Not failed because not overlapping					
Z						Fails under s.435(6)	Not failed because not overlapping					

# CFM97290 Interest restriction: Public Infrastructure: Effect of section 435 election on anti-cycling provisions

## TIOPA10/S435(10)

Where the majority (i.e. more than half) of the members of a joint infrastructure election under s435 have been qualifying infrastructure companies (QICs) for five years or more, all members are able to revoke the election to be a QIC to have effect from that time, regardless of whether their individual election to be a QIC has had effect for five years or more (i.e. regardless of the [anti-cycling provisions](#)).

### Example

Companies A, B and C are members of the same worldwide group, and have each been subject to QIC and s435 elections with effect from 1 January 2018.

Company D is acquired by Company C on 1 January 2020. It is a QIC and has been since 1 January 2019. An election is made with effect from 1 January 2020 for it to become a member of the A, B and C joint infrastructure election under s435.

Companies C and D wish to revoke their elections to be QICs at the same time. Without the effect of s435, the earliest this could have effect from is 1 January 2024 (the beginning of the accounting period starting five years after Company D's election to be a QIC).

As the majority of the members of the joint infrastructure election under s435 have had their election to be a QIC in effect for a period of five years at 31 December 2022, Company C and D may revoke their election to be a QIC with effect from 1 January 2023.



# CFM97300: Interest restriction: Public Infrastructure: Exemption for interest payable to third parties

## TIOPA10/S438

Where a company meets all four conditions for being a [qualifying infrastructure company](#) (QIC) for an accounting period, certain amounts which would otherwise be considered [{tax-interest expense}](#), are considered excluded from the calculations in that period.

A tax-interest expense amount would be excluded so far as it is attributable to:

- A [creditor which is not a {related party} of the company](#);
- A related party creditor which is a QIC; or
- A related party creditor which has a [qualifying old loan relationship](#) with the company.

This applies in respect of all types of tax-interest amounts. So as well as expense amounts from loan relationships, it also applies to derivative contracts, finance leases, debt factoring arrangements (or similar transactions) and service concession arrangements accounted for as a finance liability. In such cases the reference to the 'creditor' should be read as being a party to the particular derivative contract or financing arrangements.

In all cases, for the exemption to apply, the recourse of the creditor must be limited to [qualifying infrastructure matters](#) in the event that the company fails to perform its obligations under that relationship.

### Guarantees from related parties

To determine whether a creditor is a related party or not, the main rules about [{guarantees from related parties}](#) are turned off for the purposes of the infrastructure rules. Instead that are specific restrictions about the [{limited recourse of financial instruments}](#) which need to be applied.

### Other amounts to be ignored or treated as nil

Note that where a company is a qualifying infrastructure company, then further [amounts will be ignored or treated as nil](#) for the purposes of the [fixed ratio method](#) and the [group ratio method](#).

# CFM97320: Interest restriction: Public Infrastructure: Limited recourse of financial instruments

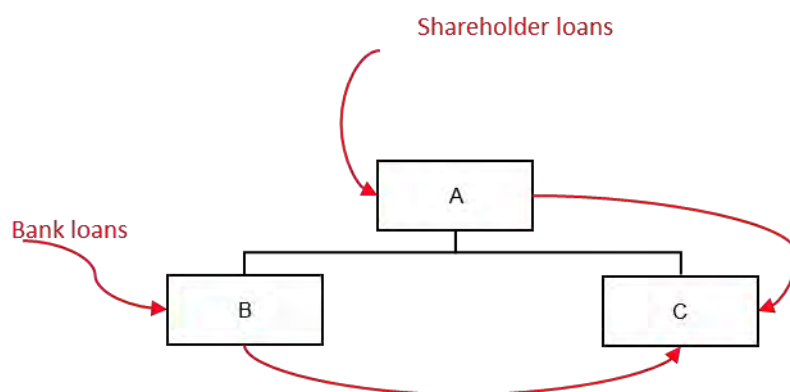
## TIOPA10/s438(4),(5),(6)

For a tax-interest amount to be excluded under the infrastructure rules, the recourse of the creditor must be limited to 'relevant infrastructure matters'. This means if a [qualifying infrastructure company \(QIC\)](#) fails to perform its obligations under the instrument, the creditor's recourse is limited to:

- Income of a QIC;
- Assets of a QIC;
- Shares in a QIC; or
- Debt issued by a QIC.

It does not matter whether the recourse relates to the company that has entered into the particular financial instrument, or another QIC.

### Example



Company A owns shares in Company B and Company C.

Company C was incorporated to hold and undertake a PFI contract to construct a school. It borrows from its only shareholder, Company A, and its sister company, Company B. It meets the conditions in s433 and has elected to be a QIC.

Company B acts as a finance company, and borrows from a bank to lend to Company C on back to back terms. Company B meets the conditions in s433 (by virtue of its only income and assets deriving from its loan to Company C) and has elected to be a QIC.

Company A borrows from its shareholders, X and Y, to fund its lending to Company C. It also meets the conditions in s433 (by virtue of its only income and assets deriving from its shareholdings in B and C and its loan to C) and has elected to be a qualifying company.

A and B grant the bank recourse over the shares and loan notes issued by C, held by A. This is recourse limited to 'relevant infrastructure matters' i.e. shares in and debt issued by QICs.

A borrows from its shareholders, who are related parties. Tax-interest amounts will therefore in any case only be excluded if it is a [qualifying old loan relationship](#), as well as if the creditors' recourse is limited to relevant infrastructure matters. The shareholders recourse is limited to the assets of A on winding up i.e. the assets of a QIC, again 'relevant infrastructure matters'.

## **Guarantees**

Typically any [guarantee, indemnity or other financial assistance](#) provided in favour of the creditor should be taken into account for the purposes of ascertaining whether the recourse of the creditor is sufficiently limited. However, there are particular provisions which allow the effect of guarantees to be disregarded in certain circumstances.

# **CFM97330 Interest restriction: Public Infrastructure: Guarantees, indemnities and financial assistance**

## **TIOPA10/S438(5)&(6)**

Typically any guarantee, indemnity or other financial assistance provided in favour of the creditor should be taken into account for the purposes of ascertaining whether the recourse of the creditor is sufficiently limited.

So where a non-QIC company has provided a creditor with a guarantee, indemnity or other financial assistance in respect of a particular instrument, then it would normally follow that the creditor would have recourse to non-QIC income and assets. As such, tax-interest expense amounts in respect of the instrument would not be excluded from the interest restriction calculations.

However, guarantees, indemnities and other financial assistance can be disregarded in the following scenarios:

- If they are provided before 1 April 2017;
- If they are provided by an related person who is not a related to the company;
- If they are provided by a {relevant public body}; or
- If it is a non-financial guarantees which meet certain criteria.

## **Guarantees provided before 1 April 2017**

Guarantees, indemnities and other financial assistance provided before 1 April 2017 can be disregarded for the purposes of assessing the recourse of a financial instrument.

### **Accession of guarantors**

Some facility agreements may require that new companies in the group accede to the facility as guarantors in certain circumstances. For example, where a newly incorporated company is inserted in the group structure. This will not in itself cause the recourse of the instrument to be tainted, as long as the effect of the guarantee is substantially unchanged as a result of the accession.

### **Example**

An original guarantee was provided before 1 April 2017 on a particular loan facility. The exclusion for pre-1 April 2017 guarantees can still apply to a subsequent accession to the guarantee by another group company where the loan facility and terms of the guarantee remain unchanged (apart from the accession of the new guarantor). The effect of the guarantee should be substantially unchanged as a result of the accession.

## **Guarantees from unrelated parties**

Guarantees, indemnities and other financial assistance provided by a person who is not related to the company can be disregarded.

## **Guarantees from relevant public bodies**

Guarantees, indemnities and other financial assistance provided by a {relevant public body} can be disregarded.

## **Non-financial guarantees**

Non-financial guarantees can be disregarded for the purposes of determining whether recourse is limited to relevant infrastructure matters where:

- The guarantee is for performance by any person of a contractual obligation to provide goods or services to a QIC;
- It is given by the person providing the goods or services or by a person who is a related party of that person; and
- The maximum amount for which the guarantor is liable does not exceed the consideration given under the contract for the provision of the goods or services.

### **Example 1**

A university contracts with a company to construct student accommodation. The contract for construction is held by a special purpose company ('SPC'), of which the construction company owns 75% of the ordinary share capital, and the university owns the remaining 25%. Construction is funded by bank debt.

A guarantee is provided by the construction company, providing assurance that the student accommodation will be provided on time and to specification. This guarantee would be considered a non-financial guarantee and therefore the debt will have limited recourse to relevant infrastructure matters.

**Example 2**

A property investment company holds a block of flats which are let to tenants. The parent provides the company with a guarantee that the accommodation will be fully let each period. This is not a guarantee for performance of a contractual obligation, and the parent, as guarantee, would be considered as providing recourse to the lender outside of relevant infrastructure matters.

# CFM97340 Interest restriction: Public Infrastructure: Qualifying old loan relationship

## TIOPA10/S439

A loan relationship is a qualifying old loan relationship of a [qualifying infrastructure company](#) (QIC) if the company entered into the loan relationship on or before 12 May 2016 and at 12 May 2016, at least 80% of the total value of the company's future qualifying infrastructure receipts for the qualifying period was highly predictable by references to qualifying public contracts.

If it is a qualifying old loan relationship at 12 May 2016, a loan relationship will continue to be one, subject to amendments being made to the loan, and to changes in the assets held by the company which entered into that loan relationship.

### Qualifying period

A qualifying period for the purposes of a qualifying old loan relationship means the period beginning on 12 May 2016 and ending on the earlier of 11 May 2026 and the date the loan relationship ceases.

### Qualifying public contract

A qualifying public contract is a contract which was entered into at any time on or before 12 May 2016 and, at that time, was expected to have effect for at least 10 years and it was entered into with a relevant public body or following bids made in an auction conducted by a relevant public body.

For the purposes of the meaning of a qualifying public contract, bids made in an auction has its ordinary meaning.

#### Example 1

Ofgem, acting on behalf of the Gas and Electricity Market Authority (GEMA) appoints a system operator, to be responsible for ensuring operation of the whole UK electricity system. Offshore transmission operators contract directly with the system operator, which is not a relevant public body. However, to secure a contract with the system operator, companies must go through several rounds of bidding in competition, involving sealed bids.

This tender is run by Ofgem; as such the contract between the system operator and the offshore transmission partner (although not having a relevant public body as party to it) will be a qualifying public contract.

### **Example 2**

Under the Governments Feed In Tariff (FIT) scheme, companies receive payments with tariff rates set by the Department of Business, Energy and Industrial Strategy (BEIS); these are for both generation (of electricity for the company's own use) and export (into the national grid). For some generating installations, a company wishing to be part of the FIT scheme must obtain accreditation from Ofgem, acting on behalf of GEMA.

Whilst GEMA licenses a FIT company, and BEIS controls the tariffs it receives, the FIT company neither has a contract with a relevant public body, nor has it bid for a contract in an auction run by one. Therefore the contract with an energy supplier is not a qualifying public contract.



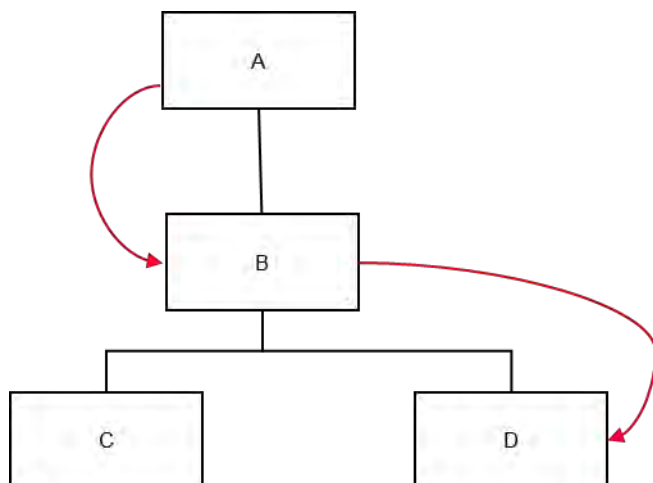
# CFM97350 Interest restriction: Public Infrastructure: Qualifying public receipts

## TIOPA10/S439(3)-(5)

For the purposes of the meaning of a qualifying old loan relationship, a qualifying infrastructure receipt of a company is:

- any revenue receipt arising from a qualifying infrastructure activity carried on by the company; and
- such proportion of the revenue receipts arising from qualifying infrastructure activities carried on by another company, so far as they are attributable to the company's interest in that other company (directly or indirectly) arising as a result of shares or loans.

### Example 1



Company A owns all of the share capital in Company B, and Company B owns all of the share capital of Company C and Company D.

Both Company C and Company D hold PFI contracts with local authorities which generate qualifying infrastructure receipts which are considered highly predictable from 12 May 2016 for approximately 30 years.

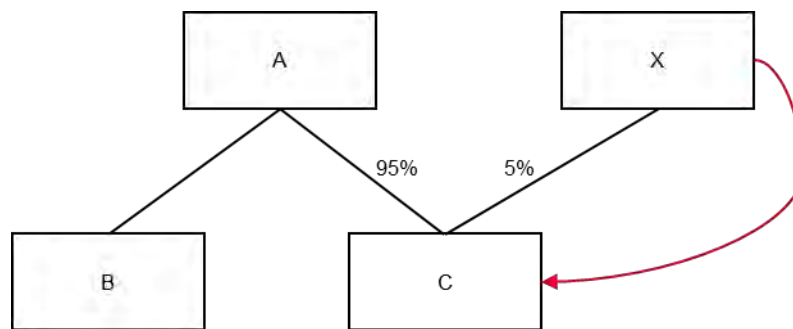
Company B's only assets are the shares in Company C and Company D, and a loan to Company D. Its income, therefore, is limited to dividends and interest receivable from its subsidiaries. It is a QIC.

For the purpose of determining whether Company B has a qualifying infrastructure receipt, both the returns from the holding in Company D's

issued loan notes, and Company C and Company D's shares are considered, so far as the underlying activity of the companies constitute a qualifying infrastructure activity generating qualifying infrastructure receipts. In this example, all the activity of Company C and Company D are considered generating qualifying infrastructure receipts, and as such all Company C and Company D's interest and dividends are considered qualifying infrastructure receipts.

Company A's only assets are the shares in, and a loan to, Company B. As noted, neither Company A nor Company B are considered to undertake a qualifying infrastructure activity. In order to determine whether Company A's dividend receipts and interest receivable are qualifying infrastructure receipts it must consider the activities of Company B's investments, Company C and Company D. In this example it would conclude, as Company B does, that its dividend receipts and interest receivable are qualifying infrastructure receipts by reference to Company C and Company D's qualifying infrastructure activity.

### Example 2



Company A, owns 95% of the share capital in Company C and itself has a wholly owned subsidiary Company B (these are its only assets). Company X, an unrelated party, owns the other 5% of Company C's shares and has provided it with a loan.

Company C holds a PFI contract with a local authority which generates qualifying infrastructure receipts which are considered highly predictable from 12 May 2016 for approximately 30 years.

As in the previous example, Company A will have qualifying infrastructure receipts by virtue of dividends from Company C. Its dividend receipts from Company B will not be qualifying infrastructure receipts. In order to determine the relative value of Company A's qualifying infrastructure receipts, it will have to consider the present value of its forecast cash flows (dividends) from both Company B and Company C, as at 12 May 2016 for the qualifying period.

# **CFM97360 Interest restriction: Public Infrastructure: Highly predictable**

## **TIOPA10/S439(5)&(6)**

For the purpose of consideration of qualifying infrastructure receipts by reference to qualifying public contracts, receipts are considered highly predictable so far as their value can be predicted with a high degree of certainty because the amounts of receipts, or parts of receipts, are fixed by a qualifying public contract and the factors affecting the volume of the receipts are fixed by a qualifying public contract or are otherwise capable of being predicted with a high degree of certainty.

### **Example 1**

A special purpose company (SPC) is incorporated to hold and undertake a PFI contract with a local authority to construct a toll road, and maintain and operate it for 45 years.

A local authority is the contract counterparty and agrees to make payments to the SPC in each period of the contract in exchange for the road being available for use. Any toll receipts collected are the local authority's. The shareholders bid for the contract, in competition with others, such that its price reflected the discounted expected cash flows from these receipts and related construction, operation, maintenance and financing costs.

The receipts of the SPC will be considered fixed by a qualifying public contract.

### **Example 2**

A SPC company is incorporated to hold and undertake a PFI contract with a local authority to construct a toll road, and maintain and operate it for 45 years.

A local authority is the contract counterparty and agrees to make payments to the SPC in each period of the contract in exchange for the road being available for use. Any toll receipts collected are for the benefit of the SPC, and the local authority has no control over the pricing. The shareholders bid for the contract, in competition with others, such that its price reflected the discounted expected cash flows from these receipts and related construction, operation, maintenance and financing costs.

Although some of the receipts of the SPC will be considered fixed by a qualifying public contract, those receipts which are based on the use of the

road are not. They fail two tests, both of which must be met for them to be considered fixed by a qualifying public contract. The amount of the receipts (i.e. the schedule of toll fees to use the road) is not fixed by the contract with the local authority; and the volume of the receipts is neither fixed by the contract or otherwise capable of being predicted with a high degree of certainty

Unless the toll fees are expected (on 12 May 2016) to constitute no more than 20% of the total revenue of the SPC from 12 May 2016 until the end of the [qualifying period](#), no loan relationships of the SPC can be qualifying old loan relationships.

# CFM97370 Interest restriction: Public Infrastructure: Ceasing to be a qualifying old loan relationship

## TIOPA10/S439(7)-(9)

### Amendments to loan relationship

If a [qualifying old loan relationship](#) is amended, for example to allow further amounts are loaned or the term of the loan extended, then the exemption will only be available for a proportion of amounts related to the original loan relationship on a just and reasonable basis.

#### Example 1

A [qualifying infrastructure company](#) (QIC) has a qualifying old loan relationship: a £10m loan. On the last day of accounting period ended 31 March 2020, an additional amount is drawn down from the lender such that the loan's principal is increased to £15m. In the accounting period ended 31 March 2021 only £10m of the loan will be considered a qualifying old loan relationship. The balance of £5m would have to be considered on its own merits as to whether it meets the necessary criteria to exempt the associated interest payments from tax-interest.

### Loan facilities

Companies will often have access to loan facilities where the amounts to be loaned are agreed, but the actual drawn down occurs at a later date.

Where a loan facility is entered into on or before 12 May 2016 and amounts are drawn down before this date, then the facility will fall to be a 'qualifying old loan relationship' under s439.

As long as a loan relationship existed on or before 12 May, then further amounts drawn down after 12 May 2016 under the same facility could be part of the original loan relationship and as such be considered to be part of the original qualifying old loan relationship. Whether additional amounts drawn down are part of the original loan relationship would depend on the particular facts and circumstances. HMRC would be able to provide assurance on this through its non-statutory clearance service.

However where a loan facility is agreed on or before 12 May 2016 and the first substantial amount is not drawn down until after 12 May 2016 the facility cannot be considered to be a qualifying old loan relationship because as of

12 May 2016 there is no money debt in place. As such, there cannot be a loan relationship in place and therefore there cannot be a qualifying old loan relationship.

Where a loan facility is amended after 12 May 2016, then it is only the amount and term of the original loan facility that will fall into the grandfathering provision under s439.

## Changes to assets held

A QIC which has a qualifying old loan relationship may acquire and dispose of assets.

At any time after such a change in the assets held, the QIC must consider the assets it holds and whether, if it had held those assets at 12 May 2016, it would have met the conditions necessary for its loans to be qualifying old loan relationships (i.e. 80% of the total value of the company's future [qualifying infrastructure receipts](#) (QIRs) for the [qualifying period](#) was [highly predictable](#) by references to [qualifying public contracts](#)).

By virtue of the meaning of qualifying infrastructure receipts, in considering the assets of a company, where these include shares in, or debt issued by another company, account must also be taken of changes in the assets of that company.

If following a change in the assets held by QIC which has a qualifying old loan relationship, it would not have met the conditions necessary, the loan relationship will cease to be considered a qualifying old loan relationship at that time and any subsequent time.

### Example 2

Company A has a 31 December balance sheet date. It had borrowed from its parent in order to acquire the assets it held. As at 12 May 2016 it held:

- an asset X, which generates QIRs which, for the qualifying period, are highly predictable by reference to a qualifying public contract ('good QIRs');
- an asset Y which generated qualifying infrastructure receipts which were not considered highly predictable; and
- shares in Company B, which did not generate any QIRs (good or otherwise) and did not undertake qualifying infrastructure activities.

Company A disposed of Company B on 31 December 2019, and at this point (holding only assets X and Y) it met the conditions to be a QIC and elected as such for the following accounting period ended 31 December 2020.

For the accounting period ended 31 December 2020, Company A considered whether its loan from its parent was a qualifying old loan relationship. In order to do so it reviewed the discounted cash flows of QIRs from both assets X and Y from 12 May 2016 for the qualifying period in order to understand establish what proportion which would be considered good QIRs (and whether greater than 80%).

### **Example 3**

Company A's only asset is shares in Company B, its wholly owned subsidiary. Both have a 31 December balance sheet date. Company A has a loan from its parent which it used to fund acquisition of Company B's shares. Company B, as at 12 May 2016, only owned asset X which generated good QIRs.

Company B acquired asset Z on 1 January 2021. This asset, although under construction on 12 May 2016, did not generate revenue until 30 June 2017.

For the accounting period ended 31 December 2020, Company A considered whether its loan from its parent was a qualifying old loan relationship. In order to do so it reviewed the discounted cash flows of QIRs from both assets X and Z from 12 May 2016 for the qualifying period, in order to understand what proportion of the dividends receivable from Company B would be considered good QIRs (and whether greater than 80%).

In this context, if a company acquires a public infrastructure asset for which construction or conversion had not commenced at 12 May 2016 (or shares in / debt issued by a QIC holding such public infrastructure assets), qualifying infrastructure receipts in relation to such assets cannot be considered highly predictable.

### **Example 4**

A QIC, Company A, has a qualifying old loan relationship: a £100m loan. The loan relationship qualifies on the basis of the only assets the company owns: shares in two qualifying infrastructure companies holding PFI contracts which generate highly predictable qualifying infrastructure receipts.

Company A disposes of the shares in one of the companies and acquires shares in another company holding a PFI contract. This PFI contract was for the design, build, finance, maintenance and operation of a hospital; the tender process ran from 1 July 2015 and ran until 30 June 2016 where 'financial close' was reached. Construction began shortly thereafter, and the hospital

was completed and ready for use on 31 December 2017. As the hospital was not in the process of construction at 12 May 2016, it will not be considered to generate qualifying infrastructure receipts which are highly predictable. On the basis that Company A's receipts are broadly equal from both of its investments, its loan relationship will cease to be a qualifying old loan relationship at the point it acquires the shares in the new company.

## **Extension of Existing Assets**

A Qualifying Infrastructure Company may have taken a loan out to fund a public infrastructure project that contains assets where a highly predictable income stream is generated by reference to the qualifying public contract. This loan has fulfilled the conditions to be a qualifying old loan relationship. What happens if the public body wants to extend the contract with the need to construct more of the same assets but no further loan finance is required?

In this case the extension to the project is regarded as an extension to the original assets and is not regarded as a new asset. The extension is not regarded as an infrastructure asset that did not exist or was not in the course of being constructed or converted on 12 May 2016 for the purposes of TIOPA 2010/s439(9)(c). In this case the loan relationship is preserved as a Qualifying Old Loan Relationship. This assumes that the terms of the original Qualifying Old Loan Relationship are not amended.

For example a QIC could be constructing a Windfarm. If after 12 May 2016 the project was extended to include further windfarm assets which are the same or essentially similar to those in the original project then the extension of the project would not change the status of the original qualifying old loan relationship that was put in place to fund the original project. This assumes that the terms of the original qualifying old loan relationship remain unchanged. However if the assets of the original contract are sold off and the original loan relationship is in place then this loan relationship will cease to be a qualifying old loan relationship.



# CFM97380 Interest restriction: Public Infrastructure: Amounts to be ignored or treated as nil

## TIOPA10/S440-S442

While a company is a [qualifying infrastructure company](#) (QIC), as well as exempting [certain amounts](#) from the company's [tax-interest expense](#), further adjustments are made in the calculation of any potential Corporate Interest Restriction.

- The QIC will be treated in that same accounting period as having nil tax-interest income (TIOPA10/S440).
- Amounts that are taken out of tax-interest expense (under s438) or tax-interest income (under s440) are left out of for the purposes of calculating the [adjusted net group-interest expense](#) and [qualifying net group-interest expense](#) for the [period of account](#) concerned (TIOPA10/S442(2)).
- The QIC will be treated as having nil [tax-EBITDA](#) (TIOPA10/S441).
- The QIC is treated as if it was not part of the group for the relevant account period when calculating group-EBITDA (TIOPA10/S442(3)).

Note that amounts of tax-interest income, tax-EBITDA and group-EBITDA are treated as nil regardless of whether any amounts are excluded from tax-interest expense.

Where a [worldwide group](#) includes a QIC ordinarily the de-minimis provisions are disapplied, but this is subject to [an exception](#).

### Effect of transitional period and one fails all fails provisions

The amounts exempted or treated as nil will be altered in respect of a QIC in an accounting period subject to the [transitional rules](#), or a joint election in which one of the members has failed the conditions necessary to be a qualifying infrastructure companies

# CFM97390 Interest restriction: Public Infrastructure: Interaction with the 'de minimis' provisions

## TIOPA10/S443

In general, in a period of account where a [worldwide group](#) includes a [qualifying infrastructure company](#) (QIC), the de minimis provisions are not taken into account in calculating the [interest capacity](#) of that group.

However, there may be some circumstances in which this would limit a group's deductions for tax-interest to less than the de minimis amount. There are therefore further rules to ensure that the group's deductions for [aggregate net tax-interest expense](#) are never restricted below the de minimis amount.

These rules work by comparing:

- the total disallowed amount of the group in the period calculated as if Chapter 8 applies (and therefore the de minimis is not available) – the 'Chapter 8 amount'; and
- the total disallowed amount of the group in the period calculated as if Chapter 8 was not applied, but interest capacity of the group was restricted to £2m i.e. the de minimis – the 'ordinary amount'.

In an accounting period in which the Chapter 8 amount exceeds the ordinary amount, the rules in Chapter 8 are switched off and the interest capacity is taken to be the de-minimis amount.

However, from 1 January 2018, these rules do not apply to a worldwide group that has QIC (Q) that receives tax-interest income (that is not insignificant) from another QIC which is not in the same worldwide group as Q but which is a related party of Q. Where this applies the group must apply the infrastructure rules to Q.

### Example

Company A and Company B are in a group together. Company B is a QIC.

£m	A	B	Total		
	(Non-QIC)	(QIC)	No Chapter 8	Ordinary amount	Chapter 8 amount
Tax-EBITDA	Nil	10.0	10.0	N/A	Nil
Tax-interest expense	1.5	1.0	2.5	2.5	1.5
Capacity			3.0	2.0	0.0
Restriction			0.0	0.5	1.5
Total interest deducted			2.5	2.0	1.0

Column 'No Chapter 8' reflects interest restriction which would arise if Company B had not made an election to be a QIC which had effect for the accounting period. Interest capacity of the group would be £3m, by reference to the fixed ratio method.

However, Company B is a QIC. The Chapter 8 amount for the group would therefore be £1.5m, as there is no tax-EBITDA in Company A to generate interest capacity and the de minimis is not available.

The ordinary amount would be £0.5m. As this is lower than the Chapter 8 amount, the interest capacity of the group will be £2m for this accounting period.

Application of the above exception is not considered a revocation, and as such a comparison of the Chapter 8 amount against the ordinary amount may be required accounting period on period.

# CFM97400 Interest restriction: Public Infrastructure: Interaction with the transitional provisions

## F(No.2)A17/SCH10/PARA33(3)

Where a company fails one of the conditions required to be [qualifying infrastructure company](#) (QIC), but is able to make a valid election for an accounting period subject to the transitional rules the amounts treated as exempt, or nil, for the purposes of the [fixed ratio method](#) and [group ratio method](#) are altered.

The amounts of the QIC which would otherwise be treated as exempt or nil are only treated as so on a just and reasonable basis, to the extent to which that company meets the [public infrastructure income test](#) and [public infrastructure asset test](#) in that transitional accounting period.

The amounts not considered or exempt or nil will form party of the calculation of the [fixed ratio method](#) and [group ratio method](#).

### Example

A group company (Holdco) holds shares and loans in ten companies incorporated as special purpose companies ('SPCs') to hold individual investment properties. It funds its investment with a loan from a bank. Holdco and the SPCs all have 12 month accounting periods ending 31 May 2018.

For the purposes of the example, the value of the shares and loans recognised on the balance sheet of Holdco are attributable equally amongst its ten subsidiaries. Each company generates the same amount of income in each period.

Seven of the companies are qualifying infrastructure companies, by virtue of holding buildings within a UK property business which are let to unrelated persons on a short term basis. Three are not. Holdco fails the public infrastructure asset test in the accounting period ended 31 May 2018.

Nonetheless, Holdco and each of the seven qualifying infrastructure companies make a section 434 election on 31 January 2018. This followed Holdco disposing of its shares and loans in the three subsidiaries which were not qualifying infrastructure companies, and used the funds to acquire three more companies which were qualifying infrastructure companies. If any accounting period began after this date, it only holds assets and accrues

income which would allow it to pass the public infrastructure income and asset tests for that accounting period; therefore the transitional rules apply.

Considering Holdco in the period to 31 January 2018, only amounts in relation to the proportion of the loan which was used to purchase the seven qualifying infrastructure companies should be considered exempt amounts. In the period from 31 January all amounts of interest could be considered exempt.

If Holdco had EBITDA or interest income, a similar split would be required.

# CFM97420 Interest restriction: Public Infrastructure: Partnerships and transparent entities

## TIOPA10/S447

### Public infrastructure asset test

Where a company's interest in a partnership or other transparent entities is recognised on its balance sheet, this interest may include an interest in [public infrastructure assets](#). Depending on the nature of the assets recognised on the partnership or transparent entity's balance sheet this may enable the company recognising the interest in the partnership or other transparent entities to be a [qualifying infrastructure company](#) (QIC).

A transparent entity is any entity which would not itself, by its nature, be chargeable to Corporation Tax or Income Tax on its UK source income, even if it did not benefit from any exemptions from tax.

### Example

A company is a partner in a partnership in which it has a 50% interest.

The partnership holds a public infrastructure asset, and is undertaking a qualifying infrastructure activity. The public infrastructure asset is recognised as a tangible asset on its balance sheet.

The company does not recognise the public infrastructure asset on its own balance sheet, but an amount representing its interest in the partnership. This is the only asset held by the company on its balance sheet. This asset is not any of:

- tangible assets that are related to [qualifying infrastructure activities](#),
- service concession arrangements in respect of assets that are related to qualifying infrastructure activities,
- financial assets to which the company is a party for the purpose of carrying on qualifying infrastructure activities by the company or another associated QIC,
- shares in a QIC, and
- loan relationships to which other party is a QIC.

However, the amount recognised as representing the company's interest is considered as an asset derived from the tangible asset recognised on the partnerships balance sheet, and therefore the company can be considered to have passed the public infrastructure asset test.

### **Group balance sheet test**

For the purpose of the [group balance sheet test](#), any asset held on the balance sheet of a partnership in which the company has a significant interest can be considered held on the balance sheet for that company.

### **Exempt amounts - limited-recourse test**

The limitation to the recourse of a creditor in respect of obligations under a loan or other liability is modified where the liability is owed by a firm in which the QIC is a partner. In this case the reference to recourse being limited to the income and assets of a QIC is taken to include the income and assets of the partnership in question.

### **Other transparent entities**

The provisions which apply in the context of partnerships also apply in a similar way to other transparent entities.

# **CFM97430 Interest restriction: Public Infrastructure: Relevant public body**

## **TIOPA10/S491**

A relevant public body for the purposes of the Corporate Interest Restriction means:

- the Crown;
- a Minister of the Crown;
- a government department;
- a Northern Ireland department;
- a foreign sovereign power;
- a designated educational establishment (within the meaning given by CTA09/S106);
- a health service body (within the meaning given by CTA10/S986);
- a local authority or local authority association;
- any other body that acts under any enactment for public purposes and not for its own profit; or
- any wholly owned subsidiary of any body falling within any of the above.

Enactment for these purposes includes:

- an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
- an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
- an enactment contained in, or in an instrument made under, Northern Ireland legislation.



# **CFM97500 Interest restriction: Banking and insurance groups: Contents**

[CFM97505 Interest restriction: Banking and insurance groups: Overview](#)

[CFM97515 Interest restriction: Banking and insurance groups: Banking companies and banking groups](#)

[CFM97525 Interest restriction: Banking and insurance groups: Insurance companies and groups](#)

# CFM97505 Interest restriction: Banking and insurance groups: Overview

Broadly speaking, banking and insurance groups are subject to Corporate Interest Restriction in the same way as other groups. However, there are some adjustments to the main rules to ensure that they work in the way intended and without any unexpected consequences. These adjustments are explained separately for [banks](#) and for [insurers](#).

## The OECD Report

Although banking and insurance groups are fundamentally different in terms of their business and funding models, the [OECD report](#) identified a number of common features which are important to understand.

In both cases third party interest income is vitally important to profitability and liquidity and plays a role that is fundamentally different to that for most other businesses. For most banks, interest income and expense are largely operating items comparable with revenue and cost of sales for entities in non-financial sectors. For insurance companies, interest income is a major form of investment income used to meet liabilities as they fall due.

Secondly, both are subject to strict regulatory rules, and commercial constraints, which require them to hold minimum levels of equity and restricts their ability to place excessive levels of debt in particular entities or to use debt to fund equity investments in subsidiaries.

Thirdly, both are key providers of debt finance to groups in other sectors, either as lenders or as investors in corporate bonds.

For these reasons banking and insurance businesses are expected to be in a net interest income rather than net interest expense position, and the risk of base erosion or profit shifting due to excessive interest expense is addressed to a large extent by capital regulation.

In light of this, the OECD gave recommendations where no material risks are identified, for example where potential risks are already addressed by existing regulatory capital rules and/or tax rules. In such cases it is not expected that the country should introduce new rules to deal with a risk that does not exist or is already addressed. A country may reasonably exempt banking and/or insurance groups from the fixed ratio rule and group ratio rule without the need for additional tax rules. Where BEPS risks involving interest are identified, a country should introduce rules which are appropriate to address these risks, taking into account the regulatory regime and tax system in that country.

The Corporate Interest Restriction rules implement this recommendation by keeping banking and insurance companies within the scope of the rules, but making modifications to the definition of tax-interest appropriate to each sector. These modifications mean that the rules work as intended in these sectors and limit the compliance burden for many banking and insurance groups, reflecting the amount of risk in each group.

## What this means in practice?

### Simple cases

It is expected that most groups whose UK activities largely consist of banking or insurance will be in a net [tax-interest](#) income position by some margin. Even in the event of temporarily falling into a net tax-interest expense position the ability to carry forward [interest allowance](#) may mean that no restriction arises. The interest allowance carried forward would include net tax-interest income from the preceding five years.

HMRC expects that such groups will be able to establish with sufficient certainty that they are not subject to restriction without performing detailed calculations. Providing a group remains in a clear net tax-interest income position over a rolling five-year cycle, to take reasonable care in preparing its returns it should suffice for the group to:

- establish the [period of account](#) and its membership; and
- make a reasonable estimate of its tax-interest position for the period.

Assuming a [reporting company](#) has been appointed by the group or HMRC, it will be able to submit an [abbreviated return confirming that it is not subject to a restriction in the period](#).

Note that where a banking group wishes to carry forward surplus interest allowance to a later period (eg. because it is in a net tax-interest expense position in the later period) then it will need to file a [full interest restriction return](#) for the earlier periods. A reasonable estimate of figures prepared on a prudent basis should be satisfactory for this.

So long as the group has submitted an abbreviated interest restriction return, an [extended time limit](#) allows a [full interest restriction return](#) to have effect if it is received within five years of the end of the period of account.

### Other cases

However, where, for example, a UK holding company of a banking or insurance group issues debt to fund non-UK activities, or group entities carry

on significant amounts of activity not connected with the banking or insurance business, then the position may not be so clear. For a "mixed" group which combines non-financial business with a regulated banking or insurance company, the position will depend on the relative proportion of the UK banking or insurance business in relation to the other activities of the group.

In such cases the group will need to perform a high level review to determine whether the amount of tax-interest income which it receives exceeds its tax-interest expense. Assuming that its tax-interest income exceeds tax-interest expense by some margin, then detailed calculations would not normally be necessary. Where, however, tax-interest expense exceeds tax-interest income or where the amounts are very similar, then additional work is likely to be necessary to calculate these amounts more accurately.

# CFM97515 Interest restriction: Banking and insurance groups: Banking companies and banking groups

## TIOPA10/S450

The core business of a bank is to make loans funded by deposits and short-term borrowing. This business model can be expected to give rise to net interest income for UK banking groups.

However, there may be little commercial difference to a bank between interest income and other fees charged in connection with the making of loans. For example, a bank may offer a product for a higher rate of interest, or for a one-off arrangement fee and a lower rate of interest. In the context of banking, there is an argument that this sort of fee is equivalent to interest income given that it is a direct return on the lending.

Banks do not only deal in debt but also deal in the full range of financial instruments and do not see a particular distinction between lending of money and dealing in other types of financial instrument. In each case they will often look to minimise market risks in the products leaving a return. This is especially true for investment banking where interest is only one component of overall profit.

Nonetheless, this dealing in a wide range of financial instruments may still be supported by significant borrowing. In the light of this there is a risk that the main definition of [tax-interest](#) would introduce distortions into the UK banking market as it would provide a tax advantage for holding certain types of financial instrument over others and creates an uneven playing field between banks with a significant UK retail and lending operation and those without.

Therefore, for a banking company there is a wider definition of tax-interest and group-interest for the [fixed ratio method](#) and [group ratio method](#). This reflects the broader range of financial instruments in which they deal as part of their trading activity.

## Modification of tax-interest

Under s450, tax-interest for a banking company will not be restricted to amounts brought into account in respect of loan relationships and some derivative contracts but is a more inclusive concept which will include all amounts brought into account from its dealing in financial instruments.

For this treatment to apply the dealing in financial instruments (which should be understood to include the origination and holding of financial instruments) must be part of the trade of the banking company and the amounts brought into account must be directly linked to that dealing. This treatment will apply to all profits and losses from the instrument, including amounts of interest, dividends and fees arising from the instrument. In circumstances where a bank has an offsetting position in derivatives and also ownership of the underlying commodity, then HMRC accepts that profits and losses from the underlying commodities can also be included.

### **Example**

A bank may provide a mortgage to a customer and charge both interest and an arrangement fee for that product. Both these amounts should be recognised as tax-interest and brought into account because they arise directly from the transaction.

On the other hand, general operating expenses of the company such as staff costs and pure advisory fee income are not sufficiently closely related to the dealing in financial instruments to fall within s450.

### **'Dealing in'**

To be included within s450 the banking company must be 'dealing in' the financial instruments. The reference here to 'dealing in' would include the origination and termination of financial instruments. So for example, a banking trade consisting of writing derivative contracts would be included in s450.

### **'Financial instruments'**

The reference to dealing in 'financial instruments' includes loan relationships, derivative contracts, shares and other securities.

In circumstances where a bank has a position in derivatives and also ownership of the underlying commodity offsetting that position, then profits and losses from the underlying commodities are also included in tax-interest.

### **Impairment losses**

In line with the general definition of tax-interest, there is an exclusion for impairment losses (s450(2)) but not for credit or debt valuation adjustments. However, other exclusions contained in the general interest definition (e.g. relating to exchange gains or losses, derivative contracts entered into to hedge certain risks) do not apply.

**Banking company**

For these purposes a banking company is defined by CTA10/S269B.

## **CFM97525 Interest restriction: Banking and insurance groups: Insurance companies and groups**

The business of insurance concerns the taking of insurance premiums to underwrite risk and paying out claims to customers. Insurance companies invest premiums in stable income-producing assets, often long-term debt instruments, to generate income and ensure sufficient liquidity to pay claims as they fall due. The generation of interest income is therefore a key part of an insurance company's business. Most of an insurance company's investments are funded using premiums rather than debt, and taking into account the income from investments, HMRC expects insurance companies to be net [tax-interest](#) income recipients by a significant margin.

### **Creditor loan relationships accounted for at fair value**

Given the significant investment in long-term debt instruments, there can be considerable volatility in the amount of net interest income or expense as a result of fair value accounting. If this volatility was reflected in the net tax-interest income or expense amount, even those groups in a clear long-term net interest income position may be subject to unnecessary compliance burden. They may need to perform detailed calculations to work out their tax-interest position for each period and make the necessary carry forwards of unused interest allowance. As well as imposing an additional compliance burden, this may create uncertainty in their tax position.

To reduce the risk of these unintended side effects, companies are allowed to make an irrevocable [fair value accounting](#) election to apply an amortised cost accounting treatment instead.

To ensure that insurance companies can practically apply an amortised cost basis to the loan relationship assets they hold, s456(6)(a) has effect so that for each period they are only required to recognise amounts of interest accrued. Discounts, premiums and related transactions should normally be excluded from the measure of interest accrued. In effect this means that insurance companies will only need to consider the periodic amounts that are brought into account.

Where the insurer holds an interest in an OEIC, unit trust or offshore fund which is deemed to be a loan relationship under the {bond fund rules} (CTA09/S490) then it should calculate the tax-interest amounts arising from this deemed loan relationship on the basis of the amounts that can reasonably be regarded as equating to interest accrued for the period.



For OEICs and Authorised Unit Trusts, this will generally be determined by treating all interest distributions received from the fund in a period as falling within the definition of tax-interest while all non-interest distributions would not be tax-interest.

There is no need to calculate any {impairment loss} components when calculating the amortised cost only to disregard them as they are not included within the definition of tax-interest. In most cases it is expected that the figures for periodic payments in the company's accounting records should give a sufficiently close approximation to the net tax-interest income or expense.

## **Portfolio Investments held by insurance companies**

An insurance company in making investments to cover its insurance liabilities, may acquire an interest in a subsidiary which upon consolidation forms part of its [worldwide group](#) despite the fact that the underlying business of the subsidiary is unrelated to the insurance business and the investments are essentially held for their income stream or resale value. This could allow the interest expense of the invested-in subsidiary to be sheltered by the interest income position of the insurance group as a whole.

TIOPA10/S453 counters this by requiring that the subsidiary is not to be regarded as a consolidated subsidiary of any member of the worldwide group of the insurance company. Instead, the rules treat the subsidiary as part of a worldwide group separate from the insurance company's group, better reflecting the commercial position.

## **Lloyd's Corporate Member**

A Lloyd's corporate member brings amounts which are fundamentally interest and similar financing amounts into account under CTA09/Part 3 by virtue of FA94/S219. TIOPA10/S454 ensures that these amounts are included within the definition of [tax-interest](#).

# **CFM97700 Interest restriction: Property and REITS: Contents**

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# CFM97710 Interest restriction: Property and REITs: Overview

## TIOPA 2010/S452

There are special rules for the application of the interest restriction rules to Real Estate Investment Trusts (REITs). This is needed to ensure that the rules operate correctly as a result of certain profits of the REIT being exempted from Corporation Tax, and to allow the interest restriction rules to interact correctly with the calculation of the amounts that a REIT is required to distribute.

## Background

The [Real Estate Investment Trust \(REIT\) rules](#) are a special regime which can apply to a company, or group of companies, which owns and manages property on behalf of shareholders.

The key aspects of the regime are:

- The REIT must have a main business of property investment. The profits of the property rental business (PRB), as measured for tax purposes, are exempt from Corporation Tax.
- The REIT must pay out 90% of the profits of its exempt PRB to shareholders every year as a property income dividend (PID). The PIDs are treated as property income of the recipient, and are taxed accordingly.
- The REIT may also carry on activities that are not part of the PRB. Profits from residual business activities are not exempt.

In applying these rules, the REIT company is treated as if it were two separate companies, one carrying on the PRB and one carrying on the residual business. Furthermore, the PRB and the residual business of a 'Group REIT' are treated as if they were separate groups.

As a result, the Corporation Tax computation will be prepared on the basis of splitting out the property rental business and the residual rental business.

## Application to the interest restriction rules

In applying the interest restriction rules in the context of a REIT the normal rules apply, subject to the following modifications:

- The property rental business companies and the residual business companies are treated as being part of the same worldwide group.
- The REIT should treat their property rental business as not exempt.
- For the purposes of the [public infrastructure rules](#), the property rental business company and residual business company are treated as being the same company (so that a single election would apply to both).

Note that, other than with the application of the public infrastructure rules, the property rental business companies and residual business companies are considered to be separate companies in line with the deeming under the REIT rules.

Additional rules in respect of the way that [REITs allocate disallowances](#) which provide certain limitation but also provide significant flexibility in how amounts are allocated.

# CFM97720 Interest restriction: Property and REITs: Allocation of disallowances

## TIOPA10/S452

REITs have significant flexibility in the way they can allocate amounts of disallowance between;

- the property rental business; and
- the residual business

### Disallowances to the property rental business

- While the property rental business (PRB) is formally exempt from Corporation Tax, the amount of the disallowance is to be taken into account in calculating the amount of the PID that the REIT must make to its investors. Note there is a [limit on the disallowance that may be allocated to the PRB](#).

### Disallowances to the residual business

- The amount of the disallowance allocated to the residual business will affect the calculation of the taxable profits of the residual business, and hence will feed through to the Corporation Tax liability of the residual business.
- There are special rules in respect of [disallowance allocated to the residual business](#) where groups have allocated less than the full amount of a disallowance to the PRB. This allows groups to avoid allocating restrictions to a PRB by allocating a higher amount to the residual business.

### Example

- A REIT company has tax-interest of £10,000 in respect of its PRB and £5,000 in respect of its residual business. The maximum disallowance it can allocate to its PRB is £1,000 as any more would mean that the principle company of the group would have insufficient reserves to make the necessary PID.

As a result:

- The maximum amount of disallowance that can be allocated to the company in total across both the property rental business and residual business is £15,000.
- The maximum amount of disallowance that can be allocated to the property rental business is £1,000.
- The amount of disallowance that can be allocated to the residual business is the £15,000 less the amount actually allocated
- So for example, if it allocated £500 disallowance to the property rental business then it could allocate up to £14,500 disallowance to the residual business.

# CFM97730 Interest restriction: Property and REITs: Limit on Property rental business (PRB) disallowance

## TIOPA10/S452(5)

One of the key features of the [Real Estate Investment Trusts \(REITs\) rules](#) is that they must pay out 90% of the profits of their exempt PRB to shareholders every year as a property income dividend (PID). In calculating these profits, it must take into account all the normal Corporation Tax rules.

There are provisions in the REIT rules to deal with a situation where a REIT has insufficient reserves to make the necessary PID. In this case the amount of the distribution requirement is limited to the distributable reserves (CTA2010/S530(3) and (5)). There is special provision in the interest restriction rules to prevent a scenario where an amount of restricted interest could lead, in the absence of S530(3) and (5) CTA2010, to a REIT having to make a PID that was larger than its distributable reserves.

The interest restriction rules specify that the allocated disallowance for the PRB company must be limited so that S530 (3) or (5) CTA 2010 do not apply.

### Example:

Company A has a tax-EBITDA of £20,000 and tax-interest of £12,000. It has retained profits of £10,000 and PRB profits (before interest disallowance) £7500. The maximum PID it can make is £10,000.

To ensure that it has sufficient reserves to make the PID the maximum disallowance that can be allocated to PRB is £3611. This would give PRB profits of £11,111 and therefore a requirement to make a PID of £10,000 (90% of £11,111). The balance of the disallowance would be allocated to residual

Note that the company is not required to allocate this amount to the PRB. It has flexibility to [allocate disallowances](#) so that the full amount goes to the residual business.

# CFM97740 Interest restriction: Property and REITs: Disallowance to residual business

## TIOPA10/S452

As noted, REITs have flexibility with how they [allocate disallowances](#) between the property rental business (PRB) and the residual businesses.

To accommodate this there are special rules which apply where a group have allocated less than the full amount of a disallowance to the PRB. This allows groups to avoid allocating restrictions to a PRB by allocating a higher amount to the residual business.

This is achieved by treating the residual business as bringing in matching amounts of tax-interest expense and tax-interest income in certain circumstances.

## The steps

The following steps apply for determining how to give effect to disallowances allocated to the PRB and residual business of a REIT company in respect of a particular accounting period.

### Preliminary calculations

As an initial step it is necessary to calculate the [aggregate net tax-interest expense](#) and the [interest capacity](#) of the group for the period of account. This then determines the total disallowed amount of the group for the period in the normal way.

In calculating these amounts no special provisions for REITs apply, except:

- The "property rental business company" and the "residual business company" are treated as separate members of the same worldwide group; and
- The property rental business income and gains are not treated as exempt from Corporation Tax.

### Step 1

Determine the maximum amount that could be the allocated disallowance for the PRB and the maximum amount that could be the allocated disallowance



for the residual business. The sum of those maximum amounts is referred to as "the total REIT expenses".

These are the net amounts of tax-interest for the respective businesses. The effects of the [limit on the property rental business disallowance](#) on this step is ignored.

## **Step 2**

Determine the amount (if any) that is the allocated disallowance for the PRB for the accounting period. This amount is referred to in this subsection as "the actual disallowed amount".

This is the actual amount of disallowance allocated to the PRB, and so take accounts of the [limit on the property rental business disallowance](#).

## **Step 3**

Deduct from the total REIT expenses (from step 1) the actual disallowed amount (from step 2).

This gives the amount of the total REIT expenses that remain after taking account of the actual disallowed amount allocated to the PRB.

## **Step 4**

Determine whether so much of the total REIT expenses as remain after step 3 exceeds the net tax-interest expense of the residual business.

This determines if, ignoring these steps, there is insufficient tax-interest expense in the residual business to absorb any disallowance.

## **Step 5**

Where the application of step 4 produces an excess it means that, ignoring these steps, there is insufficient tax-interest in the residual business. In this scenario the residual business is required to bring into account in the accounting period matching tax-interest expense and income amounts equal to the amount of the excess.

By bringing in these equal and opposite amounts, this ensures that the residual business has sufficient amounts to absorb any disallowed interest not allocated to the PRB.

## **Example**

The REIT group has an interest disallowance of £100,000.

Within the group, company A has tax-interest of £10,000 in respect of its property rental business and £5,000 in respect of its residual business. The group allocates £500 disallowance to the PRB.

The following steps are undertaken to calculate the maximum amount that can be allocated to the residual business.

**Step 1: Calculate the total REIT expenses**

The total REIT expenses for the company is £15,000 (£10,000 plus £5,000).

**Step 2: Ascertain the actual disallowed amount**

The actual disallowed amount allocated to the PRB is £500.

**Step 3: Calculate the remaining total REIT expenses**

The remaining total REIT expenses after the actual disallowed amount allocated to the PRB is £14,500.

**Step 4: Determine if this exceeds the net tax-interest expense of RB**

The remaining total REIT expenses of £14,500 exceeds the net tax-interest expense of the residual business of £5,000. The amount of the excess is £9,500.

**Step 5**

The amount of excess calculated in the previous step, £9,500, is now brought into the accounts of the residual part of the business as both deemed interest expense and deemed interest income.

This increases the amount of disallowance.

**Notes**

The combined effect of these rules is to permit the whole, a part or no amount of the allocated disallowance to be treated as arising in the PRB company up to that business' net tax-interest expense, subject to the [limit on the property rental business disallowance](#).

To the extent that the allocated disallowance is not fully treated as arising in the PRB company, the balance can be allocated to be arising in the residual business company. This is given effect by treating the residual business company as bringing into account a tax interest expense and tax interest

income equal as required (to the extent that there is not already sufficient net tax-interest expense in the residual business company). In some cases this may create a residual business where there was none before.

It should be noted, however, that a consequence of these provisions is that the amount of the disallowance allocated to the PRB and the residual business of the company cannot exceed the sum of the tax-interest expense in the residual business and the PRB.

# **CFM97750 Interest restriction: Property: REITS and the Interest Restriction Return**

## **TIOPA10/S452(11)**

Where an [interest restriction return](#) is made in relation to any company carrying on residual business or property rental business it must be made clear that this is being undertaken and the return must contain information about how the return has taken into account the effect of this section. In practice this will mean listing out the separate businesses and the associated statement of allocations.

## **CFM97760 Interest restriction: Property and REITs: Corporate non-resident landlords**

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 Spring Budget 2017, the government announced a consultation on the case and options for implementing this change.

# **CFM97800 Interest restriction: Leasing: Contents**

[CFM97810 Interest restriction: Leasing: Overview](#)

[CFM97820 Interest restriction: Leasing: Long funding operating leases](#)

[CFM97830 Interest restriction: Leasing: Finance leases that are not long funding leases](#)

# CFM97810 Interest restriction: Leasing: Overview

## TIOPA10/S460

While payments under a lease are legally "rental payments", they may, depending on the nature of the leasing agreement, be treated in several different ways for accounting and tax purpose.

The starting point is that where a lease is treated as a finance lease for accounting purposes the implicit finance cost in the lease payments should be included in {tax-interest} for both the lessor and the lessee. Likewise these amounts are also included in {relevant income and expense amounts} for calculating group-interest.

Where the tax and accounting treatment of the lease are aligned then the normal rules can be followed for calculating tax-EBITDA by excluding any capital allowances claimed by the company. This will be the case where:

- An operating lease is not treated as a long funding lease; and
- A finance lease is treated as a long funding lease.

However, where the tax and accounting treatment of the lease differ then the calculation of tax-EBITDA is modified. This will be the case where:

- An operating lease is treated as a long funding lease; and
- A finance lease is not treated as a long funding lease.

## Introduction of IFRS 16

In January 2016 the International Accounting Standards Board (IASB) issued a new accounting standard ('IFRS16') for dealing with leases. This affects companies which apply International Financial Reporting Standards, including through the adoption of FRS 101. IFRS 16 is mandatory for periods commencing on or after 1 January 2019 (with early adoption permitted).

In particular, the new accounting standard is likely to mean that more assets and liabilities will be included in the lessee's accounts. IFRS 16 does not change the position of the lessor.

## **Current tax treatment**

FA11/S53 contains a rule which means that the tax rules are applied on the basis that there has been no change in the accounting standards dealing with leases. As such, any company which currently applies IFRS 16 (eg. early adopters) will need to prepare their tax computations on the basis of the old accounting requirements. This will also apply to the application of the corporate interest restriction rules.

## **From 1 January 2019**

As a result of the introduction of the new accounting standard for leasing, IFRS 16, HMRC has proposed that certain legislative changes will be made to the corporate interest restriction rules, effective from 1 January 2019.

For further details, please refer to the consultation document:

<https://www.gov.uk/government/consultations/corporate-interest-restriction-consultation-on-leases>



# CFM97820 Interest restriction: Leasing: Long funding operating leases

## TIOPA10/S460(1)(a)-(b)

A long funding operating lease is lease of plant or machinery with a term of more than five years which meet tests intended to identify operating leases that serve a financing function. In these cases the lessee can typically obtain capital allowances in respect of the asset rather than the lessor.

Where plant or machinery is leased out under a long funding operating lease, CTA10/S363 provides a reduction in the lessor's rental income representing the proportionate reduction in the value of the asset over the period, to reflect the lack of availability of capital allowances to the lessor. Conversely, CTA10/S379 restricts by the same amount the rental expense that the lessee can treat as deductible.

TIOPA10/S460 excludes each of the following when calculating a company's adjusted corporation tax earnings when determining a company's tax-EBITDA:

- the amount of a deduction under CTA10/S363 (lessor under long funding operating lease);
- the amount by which a deduction is reduced under CTA10/S379 (lessee under long funding operating lease);

Further guidance on the taxation of long funding operating leases can be found at [BLM41000](#).

# CFM97830 Interest restriction: Leasing: Finance leases that are not long funding leases

## TIOPA10/S460(1)(c)-(d)

The Corporate Interest Restriction rules contain specific provision to deal with cases where a finance lease is not a long funding lease.

### Accounting treatment

Accounting standards requires companies to treat lease rentals under a {finance lease} as if they contained 'interest' and 'capital' elements

The lessee will show in its income statement:

- the 'interest' element of lease rentals, and;
- depreciation of the leased asset over the shorter of the lease term and the asset's expected useful life, taking into account the expected value of the asset at the end of the lease term.

The lessor will only show in its income statement the 'interest' element of lease rentals. The capital element of the lease receipts will be accounted for as a reduction in the finance lease receivable.

### Tax treatment

Where a finance lease is not a {long funding lease}, the finance lessor is considered for tax purposes to have leased the asset to the lessee for a revenue hire charge. As a result the gross rentals due under a finance lease are considered to be revenue for tax purposes.

For the lessor, it therefore includes the whole of the rental receipts (including the capital element taken to the balance sheet) as taxable income for the period.

For the lessee, the charge for depreciation of the leased asset is not added back in the tax computation. Overall the total of the 'interest' and depreciation should equate to the rentals paid, net of any refund of rentals receivable on termination of the lease.

Further guidance on the taxation of finance leases which are not long funding can be found at [BLM32200](#).

## **Adjustment to tax-EBITDA**

TIOPA10/S460 excludes each of the following when calculating a company's adjusted corporation tax earnings when determining a company's tax-EBITDA:

- the capital component of the company's rental earnings under a finance lease which is not a long funding finance lease;
- the amount of depreciation in respect of any asset leased to the company under a finance lease which is not a long funding finance lease.

Consequently these amounts should not be brought into account when calculating taxable total profits of the period to determine a company's tax EBITDA.

# **CFM97900 Interest restriction: Special regimes: Contents**

[CFM97910 Interest restriction: Special regimes: Tonnage Tax](#)

[CFM97920 Interest restriction: Special regimes: Oil & Gas](#)

## CFM97910 Interest restriction: Special regimes: Tonnage Tax

[Tonnage tax](#) is a special tax regime for shipping companies under which they pay Corporation Tax based on their shipping tonnage rather than their accounting profits.

The regime includes a ring fence of tonnage profits from non-tonnage tax profits or losses, particularly finance costs. The tonnage tax rules do not permit interest deductions against the shipping activities. However, reliefs and deductions may be set off in the normal way against any profits of the tonnage tax company which fall outside the ring fence. In line with these rules, tonnage tax amounts are excluded when calculating the CIR.

The CIR tonnage tax rules only apply where an effective election into the tonnage tax regime has been made (FA 2002, Schedule 22, paras 7-15B).

The tonnage tax rules [Schedule 22 FA 2000](#) are applied before the CIR. This includes the rules at paragraphs 61 and 62 on the treatment of finance costs for [single companies](#) and [groups](#). Where there are any intra-group interest free loans across the tonnage tax ring fence, the transfer pricing rules should be applied before the [finance cost adjustment rules](#) are applied to the company or group.

### Tonnage Tax Example

A [worldwide group](#) consists of a UK parent (non-tonnage tax company) and a wholly owned UK subsidiary which is within the tonnage tax regime. The companies have accounting periods ending on 31 December 2018.

The UK parent (non-tonnage tax company) has adjusted corporation tax earnings ([tax-EBITDA](#)) of £40m and the UK subsidiary (tonnage tax company) has £38m of tonnage tax profits.

Note that the tonnage tax rules and any applicable adjustments (for example [finance cost adjustment rules](#)) are applied before the CIR is calculated under either the fixed ratio method or the group ratio method.

Tax-EBITDA for the worldwide group is £40m. This leaves out of account the £38m of tonnage tax profits (calculated under Schedule 22 FA 2000).

## CFM97920 Interest restriction: Special regimes: Oil & Gas

Part 8 of CTA 2010 deals with the corporation tax treatment of oil activities. Profits from the exploitation of oil and gas in the UK and on the UK continental shelf are subject to a special regime known as RFCT (Ring Fence Corporation Tax). Very broadly income from oil extraction activities (s272) or oil rights (s273) is treated as income (s275) from a ring fenced trade (s277) which comprises all oil-related activities (s274).

For CIR purposes the integrity of this ring fence is maintained and the rules exclude ring-fence activities entirely from the interest restriction calculation.

This includes:

- Ring fence income (CTA10/S275)
- A company's aggregate gain or loss (TCGA92/S197(3))

This means that any amounts taken into account in the calculation of the ring fence profits need to be excluded from the amounts of [tax-interest](#) and [tax-EBITDA](#) for the group in respect of the period of account. As a result, no restriction can be allocated to the ring-fenced business.

# **CFM98000 Interest restriction: Anti-avoidance: Contents**

[CFM98010 Interest restriction: Anti-avoidance: Anti-avoidance](#)

[CFM98020 Interest restriction: Anti-avoidance: Commencement and exceptions](#)

# CFM98010 Interest restriction: Anti-avoidance: Anti-avoidance

## TIOPA10/S461

The corporate interest restriction contains a regime anti-avoidance rule (RAAR) that has effect for the purpose of counteracting tax advantages that might arise from certain avoidance arrangements. The arrangements must result in a tax advantage as a result of a company:

- eliminating a restriction of [tax-interest expense](#), or reducing the amount of a restriction;
- [reactivating](#) amounts of disallowed tax-interest expense, or increasing the amount of a reactivation; or
- changing the timing of any restriction or reactivation of tax-interest expense amounts so that it is made in different accounting period from that in which it would otherwise be made.

The RAAR will apply only if the arrangement gives rise to a tax advantage. Tax advantage is defined in s461(7) and comprises

- a relief from tax or increased relief from tax;
- a repayment of tax or an increased repayment of tax;
- the avoidance or reduction of a charge to tax or an assessment to tax;
- the avoidance of a possible assessment to tax;
- a deferral of a payment of tax or advancement of a repayment of tax; and
- the avoidance of an obligation to deduct or account for tax.

The definition brings in all taxes that are chargeable as or treated as if they are corporation tax, including the CFC charge, the bank levy, and surcharges such as the banking surcharge. It also includes the Diverted Profits Tax.

In forming a view on whether the tax advantage test is met, HMRC would take into account all of the circumstances around a particular arrangement.

If the tax advantage that might arise from an arrangement is neutralised under other tax rules then the RAAR will not apply. For example, it is possible that the deduction-buying rules in CTA10/PT14 would apply to certain changes of



ownership of a company if they occur as part of an arrangement that has a main purpose of gaining access to restricted interest as a future deduction.

The legislation applies only to arrangements where a main purpose is to secure a tax advantage. The legislation does not define what is meant by main purpose or one of the main purposes. These expressions are to be given their normal meaning as ordinary English words. They have to be applied objectively, having regard to the full context and facts.

It will usually be clear whether trying to obtain a tax advantage is the main purpose of a particular arrangement. Such would be the case, for example, where the arrangement would not have been carried out at all were it not for the opportunity to obtain the tax advantage, or where any non-tax objective was secondary to the benefit of obtaining the tax advantage.

# **CFM98020 Interest restriction: Anti-avoidance: Commencement and exceptions**

## **F(No.2)A17/SCH10/PARA34**

### **Arrangements made before commencement**

The RAAR can apply to arrangements entered into before the corporate interest restriction rules come into force if a main purpose is to ensure that a tax advantage related to the operation of those rules will arise following commencement.

### **Arrangements that accelerate deductions**

However, there is an exclusion (F(No.2)A17/SCH10/PARA34(3)) for certain arrangements that merely accelerate deductions so that they are paid and brought into account as deductions for a period prior to commencement, and in consequence of that fact there is a reduced interest restriction post-commencement. This is intended to cover two scenarios, as illustrated by the examples below.

This exception is a limited one. It would not, for example, apply if a company sought to avoid interest restrictions by prepaying an amount that would otherwise become tax deductible after commencement if the effect of that prepayment would be to replace interest expense with some other form of deduction after commencement that is not within scope of the interest restriction rules.

#### **Example 1: Arrangements that accelerate interest deductions**

For example, assume that a company has previously had a deduction for accrued interest disallowed because the late paid interest rules in CTA09/PT5 apply, and that if the payment is made post-commencement it will be subject to interest restriction. To avoid this the company may arrange to pay the interest pre-commencement to avoid the post-commencement restriction.

There is a tax advantage because as a result of entering into the arrangement the company is no longer subject to restriction, and it was a main purpose to secure that advantage. However, the RAAR will not apply because the effect of the arrangement is to accelerate the deduction so as to reduce the amount of interest that will accrue following commencement.

## **Example 2: Arrangements that accelerate other deductions and in consequence increase interest capacity**

A company accelerates payment of a pension contribution so that it is made before 1 April 2017 and in consequence its post-commencement EBITDA (and hence [interest capacity](#)) is not reduced by the deduction for the contribution. This arrangement has the effect of reducing the amount of interest restriction post-commencement and a main purpose of accelerating the payment was to secure that outcome. However, the RAAR will not apply because of the exception for accelerated payments.

## **Commercial restructuring arrangements in connection with commencement**

There is a separate exclusion (F(No.2)A17/SCH10/PARA34(5)) from the RAAR for certain commercial restructuring arrangements entered into connection with the commencement of the rules that do no more than eliminate a tax disadvantage that could not originally have been anticipated when that structure was put in place.

This covers two scenarios:

- Arrangements to bring loan relationships into the charge to Corporation Tax which would, absent the interest restriction rules, result in significantly more Corporation Tax becoming payable.
- Commercial steps taken to restructure arrangements that would not have been entered into if the interest restriction rules had been in place at the time of the original arrangements.

Note that this exclusion is not limited to arrangements entered into before commencement or entered before another particular date; the arrangements may be entered into at a date considerably after commencement.

### **(A) Arrangements that would have resulted in significantly more corporation tax becoming payable**

By virtue of paragraph 34(6)(a), the RAAR would not apply to a group that effectively transferred interest income from a controlled foreign company (CFC) to a UK group company in order to avoid being subject to both a CFC charge and an interest restriction.

Prior to the restructuring some or all of the interest income of the CFC could be subject to a CFC charge. By transferring this income stream to a UK group company, it will in future be subject to Corporation Tax instead of a CFC charge. It will also become tax-interest income of the group, reducing the

[aggregate net tax-interest expense](#). This could potentially reduce any interest restriction by the amount of interest income.

**(B) Arrangements that are designed to secure the benefit of a relief expressly conferred**

By virtue of paragraph 34(6)(b), the RAAR would not apply to a restructuring that is designed to allow a group to be able to benefit from

- Designed to secure, in a way that is wholly consistent with its policy objectives, the benefit of a relief expressly conferred by a provision of the interest restriction rules; and
- Is effected by taking only ordinary commercial steps in accordance with generally prevailing commercial practice.

The reference to "a relief expressly conferred by a provision" should be interpreted widely. In particular, it would cover:

- Ensuring that a company genuinely falls to be a Qualifying Infrastructure Company (QIC) under the infrastructure rules.
- Ensuring that a tax-interest payment made by a QIC genuinely falls to be paid to a third party or to another QIC and so can be excluded under the infrastructure rules.
- Ensuring that a relevant expense amount paid by a group genuinely qualifies to be included within qualifying net group-interest expense (QNGIE) under the group ratio method.
- This exclusion from the RAAR does not apply to companies contriving to fall within a particular provision - it is necessary to genuinely fall within the provision in question in a way that is wholly consistent with its policy objectives.
- The reference "commercial steps in accordance with generally prevailing commercial practice" should also be interpreted widely given the wide range of transactions which regularly undertaken by corporate entities for commercial reasons. It would include, for example, typical transactions involving the transfer of ownership of companies, the refinancing of debt and separating out assets and businesses from a company.

It should be noted that this exclusion is intended to deal with cases where a group has previously entered into a particularly structure for commercial reasons without anticipating the corporate interest restriction rules and where now, following the introduction of the corporate interest restriction rules, it

wishes to restructure so to give a more beneficial tax outcome under the rules. However, the restructuring is likely to be purely tax driven, given that the commercial objectives are already being achieved.

Consideration should be given as to whether the new structure is such that, had it been entered from the start, achieving the tax benefits would have been considered incidental to the commercial objectives, and not a main purpose in their own right. This exclusion from the RAAR is only likely to apply where the tax benefits achieved are incidental and secondary to the original commercial objectives achieved by the structure.

### **Example 3**

The RAAR would not apply to cases where a group restructures so to fall within the [public infrastructure rules](#) in a way wholly consistent with the policy of those rules. For example, this could involve moving subsidiaries that cannot meet the conditions to be qualifying infrastructure companies (QICs) to a separate part of the group structure, creating a sub-group of companies that can qualify as QICs.

### **Example 4**

The RAAR would not apply to cases where a highly leveraged group refinances debt that does not qualify to be included within qualifying net group-interest expense with debt that does qualify. For example, a group may refinance perpetual debt with debt with a fixed term of less than 50 years.

# **CFM98200 Interest restriction: Carry forward rules: Contents**

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# CFM98210 Interest restriction: Carry forward rules: Introduction

## TIOPA/S378-S380 and S392-S395

The purpose of the carry forward provisions within the Corporate Interest Restriction is to reduce the risk that additional interest restrictions are imposed due to variations over the business cycle, other sources of volatility, and the fact that the rules are applied separately to each period of account. Volatility in a group's profitability, or in the prevailing levels of interest rates, could lead to large disallowances in one period but none in others, leading to different outcomes depending on when profits are earned. Allowing certain amounts to be carried forward achieves a degree of smoothing over a period of time, which can reduce or prevent future disallowances that would otherwise arise due to volatility.

There are three types of amounts that can be carried forward:

- The [disallowance of tax-interest](#) is applied at company level which creates an attribute to be carried forward indefinitely at company level until the disallowed amount is reactivated in a later period. The attribute is capable of being accessed even if the company becomes a member of a different group.
- [Unused interest allowance](#) is a group attribute which is carried forward for up to five years, but can only be used to reduce disallowances by members of the group. It can be augment the [interest capacity](#) for a subsequent worldwide group period of account and thereby reduce or eliminate the interest restriction for that period.
- The interest allowance of a group for a period of account may be limited by reference to the fixed ratio or the [group ratio percentage](#) to the group's [aggregate tax-EBITDA](#). In a subsequent year the fixed ratio or group ratio debt cap might be the limiting factor. The rules provide for [carry-forward of excess debt cap](#) to the next following period of account; this may be added to the debt cap for that next period and thereby increase the interest capacity for that period.
- Note that the mechanics of the set-off computation are such that brought forward interest allowance from an earlier period cannot lead to reactivation of a UK group company's restricted interest from an earlier period.

- Interest allowance and excess debt cap are attributes of the worldwide group and not a particular company. The identity of the group is determined by the [ultimate parent](#). A group can change composition and the [identity of the group](#) is retained so long as the ultimate parent does not change. It follows that a change in composition of the group does not of itself cause carried forward unused interest allowance to be lost. However, if there is a takeover of the group, any unused interest allowance and excess debt cap of the group taken over is lost. Furthermore, if a transaction involves the creation of a new company to become the ultimate parent of the enlarged group, any interest allowance and excess debt cap of both original groups is lost.



# CFM98220 Interest restriction: Carry forward rules: Terminology

The rules are designed to facilitate efficient use of interest allowance and debt cap and are rather complicated, employing a number of somewhat similar, but subtly different, expressions. The following key terms are used in the legislation relevant to calculation of the carry-forward of interest allowance and debt cap.

As we are looking at steps towards the end of the computational process, there are quite a lot of cross-references to the detailed material relating to earlier steps. For convenience, a summary is included below.

## Basic Interest allowance

If the [fixed ratio method](#) is applied, this is the lower of

- The fixed ratio percentage (30%) of [aggregate tax-EBITDA](#) (s397); or
- The [fixed ratio debt cap](#) (s400(1)).

If the [group ratio method](#) is applied this is the lower of:

- The [group ratio percentage](#) of aggregate tax-EBITDA (s398); or
- The [group ratio debt cap](#) (s400(2)).

The first element of each calculation is derived only from figures for the period of account, but the debt cap figures may take into account excess debt cap from the immediately preceding period of account. This means that although excess debt cap may be carried forward only to the next period it might indirectly augment unused allowance that may be used in a yet later period, as in [Example 2 in CFM98250](#).

## The fixed ratio method

Under the fixed ratio method (s397), the basic interest allowance is the lower of 30% of [aggregate tax-EBITDA](#) for the period, or the [fixed ratio debt cap](#). It applies unless an election has been made to apply the [group ratio method](#).

## The group ratio method

Under the group ratio method (s398), the basic interest allowance is the lower of the [group ratio percentage](#) of [aggregate tax-EBITDA](#) for the period, or the

[group ratio debt cap](#). An election must be made to [apply this method](#) in a period of account.

## The group ratio percentage

The group ratio percentage is [qualifying net group-interest expense](#) (QNGIE) divided by [group-EBITDA](#) (s399). This is capped at a maximum of 100%.

## Group-EBITDA

This is a measure of the Earnings before Interest, Tax, Depreciation and Amortisation for the group. It will be [computed](#) by making adjustments to amounts disclosed or that would be disclosed in the group's financial statements.

## The fixed ratio debt cap

This is the debt cap where the [fixed ratio method](#) applies (s400(1)). It is the sum of two amounts:

- The group's [adjusted net group-interest expense \(ANGIE\)](#) for the period; and
- The [excess debt cap](#) generated in the immediately preceding period.

Note that it does not matter if the excess debt cap was computed applying group ratio method.

## Adjusted net group-interest expense (ANGIE)

This is a measure of the group's net interest and similar expense. The [calculation](#) is based on amounts that are or would be disclosed in the worldwide group's financial statements, subject to various adjustments.

## The group ratio debt cap

This is the debt cap where an election is made to apply the group ratio method (s400(2)). It is the sum of two amounts:

- The group's [qualifying net group-interest expense \(QNGIE\)](#); and
- The [excess debt cap](#) generated in the immediately preceding period.
- Note that it does not matter if the excess debt cap was computed applying fixed ratio method.

The excess debt cap is only carried forward to the immediately following period, but the amount brought forward is taken into account in determining the maximum amount that can be carried forward to the next period.

## **Qualifying net group-interest expense (QNGIE) - S414**

This is also a measure of the worldwide group's net interest and similar expense. The [calculation](#) is based on amounts that are or would be disclosed in the worldwide group's consolidated accounts, prepared in accordance with IAS, subject to various adjustments. The amount will be the same as or smaller than ANGIE, primarily because certain related party expense is excluded.

## **The carry-forward limit (debt cap) - S400(7)**

The carry-forward limit for a period of account is the excess debt cap from the immediately preceding period, if any, plus the total disallowed amount for the period in question.

## **The interest allowance of a group for a period of account - S396**

This is the sum of the [basic interest allowance](#) and the aggregate net tax-income of the group. There is only aggregate group tax income where and to the extent that the group's tax-interest income exceeds its tax interest expense. In such a case the group's [aggregate net tax-interest expense](#) will be zero and there can be no question of an interest restriction arising.

Where the limiting factor is the fixed ratio or group ratio this takes into account figures for the current period of account only, but where the limiting factor is the debt cap this may also take into account excess debt cap from the immediately preceding period. Note, however, that in computing the interest restriction for a period of account, there is also provision for interest allowance brought forward from earlier periods to be taken into account, as part of the [interest capacity](#) for the period.

## **The de minimis amount - s392(2)-(3)**

The de minimis amount for a period of account is £2m per annum, adjusted on a pro rata basis for the length of the period of account. This sets a minimum value to the group's interest capacity for the period. Consequently all groups with sufficient aggregate net tax interest expense are able to deduct at least this amount in a period of account.

However, the de minimis amount is not taken into account in computing the group's interest allowance for a period and so any excess of the de minimis amount over its aggregate net tax interest expense is not available for carry-forward.

## **The aggregate tax-EBITDA for a period of account**

[Aggregate tax-EBITDA](#) is a tax measure of the Earnings before Interest, Tax, Depreciation and Amortisation of the UK Group companies in the worldwide group.

## **The aggregate net tax-interest expense for a period of account**

For the calculation of [aggregate net tax-interest expense](#), the net interest and similar expense of UK group companies as measured for corporation tax purposes.

## **The interest capacity of a group for a period of account**

The interest capacity is the [interest allowance](#) for the current period of account, plus the aggregate of the interest allowances for earlier periods, so far as they are available in the current period. The determination of the amounts so available is dealt with at [CFM98240](#).

However, if this is less than the [de minimis amount](#) for the period (adjusted for the length of the period), the [interest capacity](#) is the de minimis amount.

Note that it is interest allowance and not interest capacity that may be [carried forward to later periods](#).

## **The total disallowed amount for a period of account**

This is the excess if any of the [aggregate net tax-interest expense](#) of the group for the period of account over its [interest capacity](#) for the period (s373(1)).

## **Other key terms**

Other key terms that will be encountered in the following guidance are:

[The interest allowance used in a period](#)

[Originating period and receiving period](#)

Interest allowance of a period that is unexpired in a later period

# CFM98230 Interest restriction: Carry forward rules: Carry forward of interest disallowance

## TIOPA10/S378-S379 and SCH7A/PARAS 25-26

Where a UK group company has been subject to interest restriction in a period, the amounts of restricted tax-interest become an attribute of the company and it is possible for the amounts disallowed to be reactivated in a later period. Carry forward is at the level of the individual UK group company, rather than the worldwide group.

The amounts so carried forward do not time-expire, and can be carried forward indefinitely until they subject to reactivation. However, amounts expire in the following circumstances.

- In relation to trading amounts, where the company ceases to carry on the trade or its scale becomes negligible.
- In relation to trading amounts, where the trade becomes uncommercial and non-statutory.
- In relation to amounts taken into account in computing the profits or losses of an investment business, where the company ceases to carry on the business or its scale becomes negligible.

The carry forward of disallowed amounts and their reactivation is dealt with in the pages of this guidance in more detail as follows.

- Identification of items left out of account (company level) [CFM98660](#)
- Disallowed amounts carried forward (company level) [CFM98670](#)
- Reactivation of disallowed amounts (company level) [CFM98680](#)
- Statements of allocated interest reactivations (group level) [CFM98610](#)
- Computing tax-interest available for reactivation (company and group level) [CFM98620](#)
- Identification of reactivated amounts (company level) [CFM98690](#)
- Set off of disallowances and reactivations (company level) [CFM98700](#)

# CFM98240 Interest restriction: Carry forward rules: Use and time-expiry of brought forward interest allowance

A group's [interest capacity](#) is the aggregate of the interest allowance of the period and any unused interest allowance brought forward from an earlier period that is available in the current period of account (or the [de minimis limit](#), should that be higher).

The carry-forward may be restricted through time-expiry. In essence there is a five-year rule. The detail of the operation of this limitation on carry forward is described in this page of guidance.

## Originating and receiving periods of account

The rules determine how much of the allowance for an "originating period of account" is available in a "receiving period of account" taking into account of the use of the interest allowance and its time expiry.

## Amount of interest allowance that is available in a later period - S393

### The requirement for full interest restriction returns

An overriding limitation is that interest allowance for the receiving period is only available in a receiving period if a [interest restriction return](#) has been submitted for the originating period and any intervening period of account. An [abbreviated interest restriction return](#) is not sufficient. However, so long as the group has submitted an abbreviated interest restriction return, an [extended time limit](#) allows a full interest restriction return to have effect if it is received within five years of the end of the period of account.

### Processes that reduce the amount available in a receiving period

There are two reasons why interest allowance may not be available in a later period. Firstly the interest allowance may already have been used, either in the originating period itself or in an intervening period of account. Secondly, the interest allowance may be time-expired for that period.

To achieve this the amount that is available in the receiving period is the lower of two amounts, A and B:

- Amount A is simply the interest allowance for the originating period, less the amounts [used in the originating period](#) or any [intervening period](#). If all

of the interest allowance is used in the originating period, there can be nothing to carry forward to any later period and in which case A is zero.

- Amount B takes into account time-expiry and is simply the amount that is [unexpired in the receiving period](#).

## Use of interest allowance

### Use of interest allowance in the originating period - S394(2)

It is necessary to determine how much interest allowance is used in its originating period.

This is the lower of two amounts:

- The interest allowance for that originating period (this simply has the effect that the amount used can never exceed the amount capable of being used); and
- The sum of (i) the [aggregate net tax-interest expense](#) for the originating period; and (ii) the total amount of tax-interest expense amounts reactivated in the originating period.

Of these two amounts, amount (i) is the amount of the interest allowance that offsets the net tax-interest expense of the current period, thereby limiting the total disallowed amount for that period, potentially to zero. Amount (ii) represents the additional amount of the interest allowance, above and beyond what is required to reduce the total disallowed amount to zero, which is then utilised to reactivate tax-interest amounts of UK group companies that were disallowed in earlier periods.

A consequence of this definition is that there can be an amount of interest allowance available to carry forward only if there is no [total disallowed amount](#) for the originating period and all of the previously disallowed interest of the UK group companies that is capable of being reactivated in a period, has been reactivated - see [CFM98620](#) and [CFM98680](#).

### Use of interest allowance in an period of account other than the originating period - S394(3)-(5)

The amount used in a period other than the originating period (the "receiving period"), which may be the period to be tested or an earlier intervening period, is the lower of two amounts. These are:

- The amount of the interest allowance of the originating period that is available, applying the rules in S393. To compute this it is necessary to



take account of the use of interest allowance in the originating period and any earlier intervening period.

- The "relevant part" of the aggregate net tax-interest expense for the receiving period.

Computing this relevant part requires the application of another simple formula, which has the effect of applying priority rules. The amount is A-B-C, where:

A is (as one would expect) the aggregate net tax-interest expense for the receiving period;

B is the interest allowance of the group for the receiving period (with the effect that this is used first before any amounts brought forward); and

C is the interest allowance for any period earlier than the originating period.

The effect of subtracting amount C is that, once the interest allowance for the receiving period has been used to access tax-interest in the receiving period, interest allowance of an earlier originating period is used before interest allowance of a later originating period - first in, first out.

#### **Example 1, showing use of interest allowance**

Periods of account and descriptions	Amounts	Calculate and track 2018 allowance	Calculate and track 2021 allowance
<u>Year to 31 December 2018</u>			
Interest allowance	£100m	£100m	
Aggregated net tax-interest expense	£80m	(£80m)	
Total disallowed amount, 2018	nil		
Allowance carried forward	£20m	£20m	
<u>Year to 31 December 2019</u>			
Interest allowance for year	£105m		
Aggregated net tax-interest expense	£112m		
Use 2019 interest allowance	(£105m)		

Use 2018 interest allowance	(£7m)	(£7m)	
Total disallowed amount, 2019	Nil		
2018 allowance carry forward		£13m	
<u>Year to 31 December 2020</u>			
Interest allowance for year	£100m		
Aggregated net tax-interest expense	£150m		
Use 2020 interest allowance	(£100m)		
Use remaining 2018 allowance	(£13m)	(£13m)	
Total disallowed amount	£37m		
2018 allowance carried forward		nil	
<u>Year to 31 December 2021</u>			
Interest allowance for year	£200m		£200m
Aggregate net tax-interest expense	£140m		
Use 2021 allowance	(£140m)		(£140m)
Total disallowed amount, 2021	nil		
2020 interest restrictions b/fwd	£37m		
Use 2021 allowances to reactivate	(£37m)		(£37m)
2018 and 2021 interest allowance carried forward		nil	£23m

## **Amount of interest allowance that remains unexpired in the receiving period - S395**

S395 applies a five year rule. The principle here is straight-forward, that interest allowance expires after five years. However, the mechanics of the legislation is not totally straightforward. This is because it has to deal with cases where there are not five succeeding period of account each of 12

months long. For instance, this could be an issue where there is a change in the date to which the group draws up its financial statements.

To understand the mechanical provisions it is helpful to step back and ask two questions:

- How much of the originating period will have expired before you get to the start of the receiving period.
- How much of the receiving period cannot access any of the interest allowance from the originating period because it falls more than five years after the end of the originating period.

### **Two simple cases**

The first simple case (S395(2)) is where the receiving period:

- begins five years or less after originating period begins; and also
- ends five years or less after originating period ends.

In this case all of the interest allowance of the originating period is unexpired in the receiving period

So for example the group has period of account all 12 months long ending on 31 December 2018, 2019, 2020, 2021, 2022 and 2023. If the first of these period is the originating period and any of those subsequent periods is the receiving period, all of the interest allowance for the period to 31 December 2018 will remain unexpired for each of those periods.

The second simple case (S395(3)) is where the receiving period begins five years or more after the end of the originating period. In this case none of the interest allowance of the originating period is unexpired - i.e. it is all expired.

So the example above, where the receiving a period of account (no matter what length) begins on 1 January 2024, all of the interest allowance for the originating period to 31 December 2018 will have expired and cannot be used in that period

### **More complex cases**

If neither of these two simple cases is in point it becomes necessary to apply formulae.

There are two formulae to consider. The formula in s395(5) deals with the issue of a receiving period that begins later than the fifth anniversary of the start of the originating period. Should the receiving period end less than five years from the end of the originating period, it is the only formula that needs to be considered. But, this can be the case only if the receiving period is shorter than the originating period.

The formula in s 395(7) deals with the issue of a receiving period that ends more than five years after the end of the originating period. Should the receiving period also begin more than five years before the end of the receiving period begins, it is the only formula that needs to be considered. But this can be the case only if the receiving period is longer than the originating period.

It is more likely, with a complex case, that the receiving period will both begin more than five years after the originating period begins and end more than five years after the originating period ends. In this case s395(8) requires both formulae to be applied and the lower of the two amounts calculated is the unexpired interest allowance of the originating period

### **The S395(5) limit**

Turning to the formulae, the formula in subsection (5) where the receiving period:

- begins more than five years after the beginning of the originating period; and
- ends five years or less after the end of the originating period.

For this to be the case, the receiving period must be shorter than the originating period.

So, if the originating period is the year to 31 December 2018, this will apply if the receiving period is, say the 8 months from 1 March 2023 to 31 October 2023.

The formula is expressed as:

- Unexpired amount =  $(A-B) \times X/Y$ .

(A-B) is the amount of the interest allowance for the originating period that is not used in that period. So, A is the interest allowance for the originating period and B the lower of the aggregate net tax-interest expense for the period and the interest allowance itself. If the aggregate net tax-interest expense for the originating period is greater than the interest allowance for

that period, B is equal to A, A minus B will be zero, and there is no amount left to apportion.

X is the number of days from the beginning of the receiving period to the fifth anniversary of the end of the originating period

Y is the number of days in the originating period.

### **Example 2, showing s393(5) limit**

The worldwide group has a long period of account running from 1 January 2018 to 30 April 2019 (the originating period). The receiving period considered in this example is the 12 months from 1 April 2023 to 31 March 2024.

The interest allowance for the originating period is £800m. Its aggregate net tax-interest expense for the period is £606m. Accordingly, in the formula, A is £800m and B the lower of £800m and £606m, so A-B is £194m. This is the amount that has to be time apportioned by the formula.

X is the number of days from the beginning of the receiving period (1 April 2023) to the fifth anniversary of the end of the originating period, (30 April 2024). Note that this falls after the end of the receiving period. This is 396 days.

Y is the number of days in the originating period, 1 January 2017 to 30 April 2019. This is 485 days.

So the amount unexpired is  $(£800m - £606m) \times 396/485 = £158m$ .

Also if, say, £90m of interest allowance for the originating period had been used in receiving period of account falling in the period from 1 May 2018 to 31 March 22, only £94m would remain unused (amount A in S393(3)) and as this is lower than the £158m calculated above (amount B in S392(4)), this would then be the amount available in the receiving period, rather than the £158m above. This is the effect of S393(2).

### **The S395(7) limit**

S395(6) applies the formula in subsection (7) where the receiving period:

- begins 5 years or less after the beginning of the originating period; and
- ends more than 5 years after the end of the originating period.

For this to be the case, the receiving period must be longer than the originating period.

So, if the originating period is the year to 31 December 2018, this will apply if the receiving period is, say a 15 month periods of account beginning on 1 December 2023 and ending on 29 February 2024.

The formula is expressed as:

Unexpired amount =  $(C-D) \times X/Z$ .

(C-D) is the amount of aggregate net tax-interest expense for the receiving period that cannot be offset by interest allowance of that period. Accordingly:

C is the aggregate net tax-interest expense for the receiving period.

D the lower of the aggregate net tax-interest for the receiving period and the interest allowance for that period.

If there is no interest restriction in the receiving period though the availability of sufficient allowance for the period, C will equal D, C-D will be zero and there is no amount left to apportion.

As in s393(5), X is the number of days from the beginning of the receiving period to the 5th anniversary of the end of the originating period; but

Z is the number of days in the receiving period.

### **Example 3, showing s393(7) limit**

The worldwide group has a short period of account running from 1 February 2018 to 30 November 2018 (the originating period). Eventually it settles on a 31 December accounting date. The receiving period in question is the 12 months from 1 January 2023 to 31 December 2023.

This time the limitation is on the aggregate net tax-interest of the receiving period that is capable of being accessed by interest allowance for the receiving period.

In the formula in s395(7), C is the aggregate tax-interest expense for the receiving period, £600m. D is the interest allowance for the receiving period, £454m. The difference between the two, C-D, £146m is the maximum aggregate tax-interest expense for the receiving period that might be accessed by interest allowance carried forward from earlier periods of accounts. It is this amount that is time-apportioned.

X, as in the s395(5) formula, is the number of days from the beginning of the receiving period (1 January 2023) to the fifth anniversary of the end of the originating period, (30 November 2023). Note that this falls before the end of the receiving period. This is 334 days.

Z is the number of days in the receiving period, 1 January 2023 to 31 December 2019. This is 365 days.

So the amount unexpired is  $\text{£}146\text{m} \times 334/365 = \text{£}133.6\text{m}$ .

Although, arithmetically, this could be more than the interest allowance of the originating period, this has no practical effect, because the limit will then be Amount A in S393(3), the interest allowance that remains unused, rather than the amount that is unexpired.

### **Where both limits must be applied, s395(8)**

Section 395(8) applies where the receiving period

- begins more than 5 years after the beginning of the originating period and
- ends 5 years or more after the end of the originating period.

In practice this is more likely to be the case than the scenarios envisaged in subsections (5) and (7), because it can apply where the two periods of account are of the same length.

Where the subsection applies, subsection (9) requires the application of both the test in in subsection (5) - by time apportionment of the interest allowance of the originating period - and that in subsection (7) - time apportionment of the aggregate net tax-interest of the receiving period. The interest allowance of the originating period is the lower of the two amounts.

### **Example 4**

This example involves a succession of consecutive receiving periods

#### Facts

Originating period year to 31 December 2018

Interest allowance  $\text{£}1,000\text{m}$ , aggregate net tax-interest expense  $\text{£}635\text{m}$

Receiving period 1, year to 31 March 2023

Receiving period 2, year to 31 March 2024

Interest allowance  $\text{£}417\text{M}$ , Aggregate net tax-interest expense  $\text{£}600\text{m}$

Receiving period 3, year to 31 March 2025

#### Application of rules

Receiving period 1 (year to 31 March 2023) begins five years or less after the originating period begins and ends less than five years after the originating period ends, so S395(2) applies and all of the interest allowance of the receiving period is unexpired.

Receiving period 3 (year to 31 March 2025) begins five years or more after the originating period ends, so S395(3) applies and none of the interest allowance of the receiving period is unexpired.

Receiving period 2 (year to 31 March 2024) begins five years or more after the originating period begins (but not more than five years after it ends) and ends 5 years or more after the originating period ends, so S395(8) applies and the two tests in S395(5) and (7) must be applied.

Applying S595(5), (A-B) is the interest allowance of the originating period, £1,000m, less the aggregate net tax-interest expense for the period, £635m, that is £365m.

X is the number of days from the beginning of the receiving period (1 April 2023) to the fifth anniversary of the end of the originating period (31 December 2023). So X = 275. Y is the number of days in the originating period.

Accordingly the result of the formula is  $(£1,000m - £635m) \times 275/365 = £275m$

Applying S395(7), (C-D) is the aggregate net tax-interest expense of the receiving period, £600m, less the interest allowance of the receiving period, £417m, that is £183m.

X is the number of days from the beginning of the receiving period (1 April 2023) to the fifth anniversary of the end of the originating period (31 December 2023). So X = 275. Z is the number of days in the receiving period, 366 (leap year effect).

Accordingly the result of the formula is  $£183m \times 275/366 = £137.5m$

Thus the amount of the interest allowance for the year to 31 December 2018 that is unexpired is the lower amount, £137.5m

### **Example 5**

The facts are exactly the same as in [Example 4](#) except that in the receiving period from 1 April 2023 to 31 March 2024, the interest allowance is £200m and the aggregate net tax-interest expense £600m.

As in Example 4, all of the tax allowance of the originating period (year to 31 December 2018) is unexpired in receiving period 1, year to 31 March 2023, but none is unexpired in receiving period 3, year to 31 March 2025.



For receiving period 2, year to 31 March 2025, the formula in S395(5) gives the same result as in example 4.

However, but applying S395(7), C-D is now £400m - compared to example 4, in the receiving period, there is higher amount of aggregate tax-interest that is not offset by interest allowance of the receiving period itself. As in Example 4, X is 275 and Z is 366. Accordingly, applying s395(7) this limit is  $(£600m - £200m) \times 275/366 = £300.5m$ .

It follows that the limit is provided by applying the formula in S395(5). This limit is as in Example 4,  $(£1,000m - £635m) \times 275/365 = £275m$ .

Thus the amount of the interest allowance for the year to 31 December 2018 that is unexpired is the lower amount, £275m.

### **Example 6**

This is an expanded version of [Example 2](#), showing three consecutive periods of account.

#### Facts

The originating period is a long period of account running from 1 January 2018 to 30 April 2019. The interest allowance for the originating period is £800m. Its aggregate net tax-interest expense for the period is £606m.

The receiving period to be considered are

Receiving Period 1: 1 May 2022 to 31 March 2023

Receiving Period 2: 1 April 2023 to 31 March 2024

Receiving Period 3: 1 April 2024 to 30 November 2024, in which:

Aggregate net tax-interest expense = £200m, interest allowance = £78m.

#### Application of rules

Receiving period 1 (1 May 2022 to 31 March 2023) begins 5 years or less after the originating period begins and ends less than 5 years after the originating period ends, so S395(2) applies and all of the interest allowance of the receiving period is unexpired.

For receiving period 2 (Year to 31 March 2024), S395(5) applies and £158m  $((£800m - £606m) \times 396/485)$  of the interest allowance of the originating period is treated as unexpired, see [Example 2](#).

Receiving period 3 runs from 1 April 2024 to 31 December 2024. It begins more than 5 years after the originating period begins (but not more than 5 years after it ends) and ends more than 5 years after the originating period ends, so s395(5) so S395(8) applies and the two tests in S395(5) and (7) must be applied.

Applying S395(5), (A-B) is the interest allowance of the originating period, £800m, less the aggregate net tax-interest expense for the period, £606m, that is £194m.

X is the number of days from the beginning of the receiving period (1 April 2024) to the fifth anniversary of the end of the originating period (30 April 2024). So X = 30. Y is the number of days in the originating period, 485.

Accordingly the result of the S395(5) formula is  $(£800m - £606m) \times 30/485 = £12m$ .

Note that it is not a case of apportioning the interest allowance for the originating period between receiving periods 2 and 3. Rather, the s385(5) excludes access to interest allowance of the originating period by reference to the extent that the receiving period begins later than the fifth anniversary of the beginning of the originating period, irrespective of the length of the receiving period. So only a small part of the interest allowance is unexpired, reflecting the 30 days in the receiving period that still remains after that fifth anniversary, the restriction then being the proportion that period bears to the length of the originating period.

Applying S395(7) to receiving period, (C-D) is the aggregate net tax-interest expense of the receiving period, £200m, less the interest allowance of the receiving period, £110m, that is £90m.

X is the number of days from the beginning of the receiving period (1 April 2024) to the fifth anniversary of the end of the originating period (30 April 2024). So X = 30. Z is the number of days in the receiving period, 244.

Accordingly the result of the S395(7) formula is  $(£200m - £110m) \times 30/244 = £15m$ .

The amount of the interest allowance that remains unexpired in receiving period 3 is the lower of these two figures, £12m. This will be amount B in 393(4).

This then has to be compared with the amount of the interest allowance of the originating period that has not already been used. The interest allowance was £800m and £606m of this was used in the originating period itself, leaving £194m. If £30m was used in all of the periods account in the periods of

account up to 31 March 2023, that would leave £166m unused for receiving period 2, from 1 April 2023 to 31 March 2024.

So in that period Amount A in s393(3) would be £166m and amount B in S393(4) would be £158m. The amount available would therefore be the lower, £158m. If the aggregate net tax-interest expense in that period exceeded the interest allowance for the period to a sufficient extent to allow the full £158m unexpired in the receiving period to 31 March 2024 to be used, there would still be £8m unused.

This £8m would then be amount A for receiving period 3, to 31 December 2014, for which amount B is £12m. Applying S393(2), this £8m would then be available to use in that receiving period.

Note that it is purely the elapse of time that causes interest allowance to expire, not the use of interest allowance equal to the amount unexpired in the previous period. So even though interest allowance for a long originating period from 1 January 2018 to 30 April 2019, equal to the amount unexpired as at 1 April 2023 (£158m) was used in the period from 1 April 2023 to 31 March 2023, there was still £12m remaining unexpired in the receiving period beginning on 1 April 2024.

# CFM98250 Interest restriction: Carry forward rules: Excess debt cap

## TIOPA10/S400

Excess debt cap can arise where there is an interest disallowance in a period and the debt cap is not the limiting factor in computing a group's [basic interest allowance](#) for a period (S400). Excess debt cap can arise if either the [fixed ratio method](#) or the [group ratio method](#) is applied.

Where the fixed ratio method applies, excess debt cap for a period of account is the [fixed ratio debt cap](#) as calculated by reference to on the group's [adjusted net group-interest expense](#) - (ANGIE) less the fixed ratio, 30%, of [aggregate tax-EBITDA](#).

Where the group ratio method applies, excess debt cap for a period of account is the [group ratio debt cap](#) as calculated by reference to the group's qualifying net group-interest expense (QNGIE), less the [group ratio percentage](#) of [aggregate net tax-interest expense](#).

Unlike interest allowance, which can be carried forward up to five years, excess debt cap can only carry forward from one period to the next period. However, it can be seen below that the debt cap brought forward from the immediately preceding period may have the effect of increasing the amount that can be carried forward to the following period. As such, an amount of excess debt cap can, in effect, be carried forward indefinitely.

There is a limit on the amount of excess debt cap that can be carried forward, the [carried forward limit](#). This is the sum of the total disallowed amount for that period, plus excess debt cap, if any, from the period immediately before the period of account. This therefore limits the increase in the excess debt cap that arises in a period to the amount of the disallowance that has arisen in the period.

The excess debt cap carry-forward is of practical significance for a group where the factor limiting interest allowance sometimes the fixed ratio or group ratio percentage of aggregate tax-EBITDA, and sometimes the debt cap. [Example 1](#) illustrates a scenario where in the first period of account, the limiting factor is aggregate tax-EBITDA multiplied by the fixed ratio, but in the second would be the debt cap, but for excess debt cap brought forward.

The excess debt cap is available in the next period even if the group switches from applying the fixed ratio method to the group ratio method, or vice versa; there is no need to recalculate the figure on a different basis when this happens. See [Example 3](#).

The examples of carried forward debt cap also inevitably illustrate other aspects of the corporate interest restriction. For instance, the effect of the carried forward limit is that there will be excess debt cap brought forward to a period only and to the extent that there have previously been interest restrictions. So if brought forward excess debt cap reduced the net disallowance for a period to zero, there are likely to be interest reactivations, as in [Example 2](#) below. (However as tax-interest disallowances carried forward are a company rather than a group attribute, this will not happen to the extent that companies with disallowed tax-interest have left the group.)

## **Compliance requirements**

In most cases excess debt cap will only be carried forward from a period in which there is either a restriction or a reactivation and therefore for which a [full interest restriction return](#) is submitted. However, it is possible that excess debt will be carried forward in a period where a full interest restriction return is not required. In addition, where the [fixed ratio method](#) applies in the period the group may not be required to disclose the [adjusted net group-interest expense](#) (ANGIE) in the [statement of calculations](#).

In such circumstances, if the group wishes to make use of excess debt cap in a subsequent period of account, it will need to provide a calculation of the excess debt cap available in the computations backing up the interest restriction return. If the excess debt cap has been growing in amount over a number of periods, this computation may need to reach back over a number of periods of account. But, there will be no need to submit revised interest restriction returns for those periods, because the numbers required to be disclosed on the statement of calculations for those years will not have changed. Where an estimate has been used then this should be disclosed in the return.

## **Examples**

In these examples, the worldwide group draws up consolidated financial statements for period of one year ending on 31 March. There is no period of account straddling 1 April 2018 and first period to which the CIR applies is therefore the year to 31 March 2018. There are inevitably no amounts brought forward to that period.

### **Example 1**

In this example, excess debt cap carried forward from the period of account to 31 March 2018 reduces the disallowances that would otherwise have arisen in the period to 31 March 2019.

In the first period of account considered, the year to 31 March 2018, a group's position is as follows:

- There are no amounts brought forward
- Its aggregate tax-EBITDA is £1,000m
- Its aggregate net tax-interest expense is £310m
- Its ANGIE (adjusted net group-interest expense) is £320m
- Its QNGIE (qualifying net group-interest expense) is £285m (£35m of tax-interest expense on related party debt is excluded)
- Its group ratio percentage is 33%

Note that as no amounts were brought forward from an earlier period, the carry forward limit is equal to the total disallowed amount for the period.

In this case the group ratio is not advantageous because QNGIE would then become the limiting factor; it is less than 30% of aggregate tax-EBITDA, whereas ANGIE is greater than this amount.

Accordingly the fixed ratio at 30% of aggregate tax-EBITDA of £1,000m becomes the limiting factor. The total disallowed amount and excess debt cap are then:

<u>Year to 31 March 2018</u> (Examples 1, 2 and 3 are the same in this period)		
Aggregate net tax-interest expense (TI)		£310m
Fixed ratio, 30% of aggregate tax-EBITDA (FE)	£300m	
Debt cap (DC) = ANGIE (A)	£320m	
Less, interest capacity (IC), in this case with no allowance for earlier years equal to the interest allowance, the lower of the two		£300m
Total disallowed amount: TI minus IC		£10m
Aggregate disallowed amounts available for group companies to carry forward		£10m
Excess debt cap (EDC) before carry-forward limit: DC minus FE	£20m	

<u>Compute debt cap carry-forward limit:</u>		
Total disallowed amount for period	£10m	
Debt cap brought forward	nil	
Carry forward limit (CFL)	£10m	
Excess debt cap carried forward: lower of EDC and CFL		£10m

In the second period of account, the year to 31 March 2019, the group's position is as follows:

- There are no changes to the composition of the group and all company accounting period coincide with the worldwide group's period of account.
- Aggregate of disallowed amounts carried forward by group companies, £10m, as above
- Excess debt cap brought forward is £10m, as above
- Its aggregate tax-EBITDA is £900m
- Its aggregate net tax-interest expense is £273m
- Its ANGIE (adjusted net group-interest expense) is £265m
- Its QNGIE (qualifying net group-interest expense) is £241m (£24m of tax-interest expense on related party debt is excluded)
- Its group ratio percentage is 25%

In this year a group ratio election is not beneficial:

<u>Year to 31 March 2019 (Example 1)</u>		
Aggregate net tax-interest expense		£273m
Fixed ratio, 30% of aggregate tax-EBITDA (FE)	£270m	
ANGIE (A)	£265m	

Excess debt cap brought forward (EDCBF)	£10m	
Debt cap (DC) = A plus EDCBF	£275m	
Interest capacity (IC), (lower of the two)		£270m
Total disallowed amount		£3m
Aggregate of disallowed amounts carried forward by group companies (including £10m brought forward)		£13m
Excess debt cap (EDC) before carry-forward limit, DC minus FE		£5m
<u>Compute debt cap carry forward limit</u>		
Excess debt cap brought forward	£10m	
Total disallowed amount	£3m	
Carry forward limit (CFL)	£13m	
Excess debt cap carried forward: lower of EDC and CFL		£5m

This may look complicated, but in reality all that has happened is that £5m of debt cap brought forward has been used up in the period to 31 March 2019. Without the amount brought forward, there would have been a £5m larger disallowance, £8m (£273m minus £265m ANGIE), because the debt cap rather than the fixed ratio would then have been the limiting factor.

### Example 2

In this example, excess debt cap carried forward from the period of account to 31 March 2018 reactivates additional disallowed amounts carried forward to be reactivated. There is also a residue of unused interest allowance available for later periods. The example is fairly complicated; a number of processes are in play at the same time.

For the year to 31 March 2018, the position is as in [Example 1](#).

In the year to 31 March 2019, it is now as follows:

- There are no changes to the composition of the group and all company accounting period coincide with the worldwide group's period of account.



- Excess debt cap brought forward is £10m, as in Example 1
- Aggregate of disallowed amounts carried forward by group companies, £10m, as in Example 1
- Its aggregate tax-EBITDA is £900m
- Its aggregate net tax-interest expense is £259m
- Its ANGIE (adjusted net group-interest expense) is £265m
- Its QNGIE (qualifying net group-interest expense) is £241m (£24m of tax-interest expense on related party debt is excluded)
- Its group ratio percentage is 25%
- In this year the group ratio percentage is less than 30%, so a group ratio election is obviously not beneficial and the level of QNGIE is not relevant.

The position is then as follows:

<u>Year to 31 March 2019 (Example 2)</u>		
Aggregate net tax-interest expense		£259m
30% of aggregate tax-EBITDA (FE)	£270m	
ANGIE (A)	£265m	
Excess debt cap brought forward (EDCBF)	£10m	
Debt cap (DC) = A plus EDCBF	£275m	
Interest capacity = interest allowance (lower of the two)		£270m
Total disallowed amount		nil
Interest reactivation cap, S373(3) = interest allowance, £270m, less aggregate net tax-interest expense for the period of account, £259m		£11m
Disallowed interest brought forward (less than interest reactivation cap, so all of it can be reactivated - S379)	£10m	

Interest allowance remaining unused after reactivation £270m, minus £259m (S394(2)(b)(i)), minus £10m (S394(2)(b)(ii)).		£1m
Excess debt cap (EDC), DC minus FE		£5m
<u>Compute debt cap carry forward limit</u>		
Debt cap brought forward	£10m	
Total disallowed amount	nil	
Carry forward limit (CFL)	£10m	
Excess debt cap carried forward: lower of EDC and CFL		£5m

In the absence of the debt cap brought forward, the interest allowance for the period would have been lower, because the limiting factor would have been ANGIE, £265m, as against 30% of aggregate tax-EBITDA, £270m. There would have been no disallowance in the current year, because the interest allowance would still have exceeded the aggregate net tax-interest expense of £259m.

However the interest reactivation cap would then have been £6m (interest allowance £265m - equal to ANGIE, in the absence of excess debt cap brought forward - minus aggregate net tax-interest expense, £259m) - rather than £11m. Accordingly only £6m of disallowance brought forward could have been reactivated, leaving £4m for UK group companies to carry forward to the next period.

The effect of the brought forward excess debt cap was as follows:

- There is no interest restriction in the current year excess with or without the excess debt cap brought forward.
- However the excess debt cap brought forward increased the disallowed interest brought forward that can be reactivated by £4m from £6m to £10m and there is still [unused interest allowance](#) of £1m available to carry forward to later periods (instead of none). In this way, it is possible for excess debt cap brought forward to a period of account to indirectly increase the interest allowance carried forward.

- Accordingly the overall benefit is £5m and the excess debt cap carried forward to the next period of account is now £5m, as against £10m brought forward from the previous period.

### Example 3

This examples illustrates excess debt cap arising under the fixed ratio method in one year and the group ratio method in the next.

For the year to 31 March 2018, the position is as in [Example 1](#)

In the year to 31 March 2019, it is now as follows:

- There are no changes to the composition of the group and all company accounting period coincide with the worldwide group's period of account.
- Excess debt cap brought forward is £10m, as in Example 1
- Aggregate of disallowed amounts carried forward by group companies, £10m, as in Example 1
- Its aggregate tax-EBITDA is £700m
- Its aggregate net tax-interest expense is £300m
- Its ANGIE (adjusted net group-interest expense) is £285m
- Its QNGIE (qualifying net group-interest expense) is £284m (£1m of tax-interest expense on related party debt is excluded)
- Its group ratio percentage is 40%

The position is then as follows:

Aggregate net tax-interest expense		£300m
30% of aggregate tax-EBITDA	£210m	
ANGIE	£285m	
Group ratio percentage (40%) x aggregate net tax-interest expense (GE)	£280m	
QNGIE	£284m	
Group ratio election made		

Excess debt cap brought forward (EDCBF)	£10m	
Debt cap (DC = QNGIE + EDCBF)	£294m	
Interest capacity = interest allowance (lower of the two)		£280m
Total disallowed amount		£20m
Restricted interest carried forward by UK group companies (£10m b/fwd + £20m)		£30m
Excess debt cap (EDC), DC minus GE		£14m
Compute debt cap carry forward limit		
Debt cap brought forward	£10m	
Total disallowed amount 2019	£20m	
Carry forward limit (CFL)	£30m	
Excess debt cap carried forward: lower of EDC and CFL		£14m

The key point here is that the excess debt cap is not specific to either the fixed ratio method or the group ratio method. It can be used to increase the debt cap limit in either case, depending on which method the group chooses to use in a particular period.

This example also shows how the legislation allows the excess debt cap to grow cumulatively in cases where a group suffers an interest restriction each year but this is not due to the debt cap limit.

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# CFM98310 Interest restriction: Commencement Rules: Introduction

## F(No.2)A17/Sch10/Part 4

The Corporate Interest Restriction rules come into effect on 1 April 2017. They therefore apply for all [periods of account](#) of a [worldwide group](#) starting on or after that date. For groups that have a [straddling period of account](#), this period is treated as split into two notional periods of account.

The [Worldwide Debt Cap rules are repealed](#) with effect from 1 April 2017. The rules governing the repeal mirror the commencement rules in relation to straddling periods.

In addition, the following rules apply on transition to the new corporate interest restriction regime:

- There are a number of [extended time limits](#) that apply for the first year of the rules.
- Certain amounts in respect of [previous accounting and tax changes](#) are excluded from the regime.
- Certain adjustments are made to the group's financial statements in two situations to address [group mismatches](#).
- Groups may make an [election](#) to be treated, for the purposes of these rules, as if they had elected into regulations 7, 8 and 9 of the Disregard Regulations.
- Existing [guarantees](#) as at 1 April 2017 are grandfathered such that they do not themselves cause debt to be related party debt. Likewise, any [finance lease](#) in existence as at 1 April 2017 is not considered to be a related party debt.
- [Transitional infrastructure rules](#) which can apply to accounting periods beginning before 1 April 2018 give the business time to restructure if necessary to qualify for the main infrastructure rules. In addition, there is limited grandfathering of loans funding assets that have a highly predictable income based on qualifying public contracts.
- Specific provisions limit the effect of the regime anti avoidance rule for [certain restructurings in connection with commencement](#).

# **CFM98320 Interest restriction: Commencement Rules: Straddling period of account**

## **F(No.2)A17/Sch10/Para25(4)-(11)**

Where a [worldwide group](#) draws up financial statements for a period which straddles 1 April 2017 this is referred to as a straddling [period of account](#). In this situation the commencement rules apply on the basis that the actual accounts had not been drawn up.

Instead the rules will apply on the basis that the group had drawn up financial statements for two notional periods of accounts as follows:

- a period beginning with the start of the actual period for which accounts are drawn up and ending with the 31 March 2017,
- a period beginning with 1 April 2017 and ending with end of the actual period for which accounts are drawn up.

The Corporate Interest Restriction rules will then apply for the notional period of account commencing 1 April 2017.

## **Implications of the notional period of account**

### **Tax-interest and Tax-EBITDA**

The group will need to aggregate the amounts of [tax-interest](#) and [tax-EBITDA](#) for the group for the notional period of account commencing on 1 April 2017.

Where a group has a straddling period of account it is likely that notional period of account commencing 1 April 2017 will not align exactly with the accounting periods of all the UK companies within the group.

In this situation the accounting periods for individual companies in the group are likely to extend beyond the notional period for which the rules are being applied - referred to as disregarded periods. As a result, amounts of tax-interest and tax-EBITDA will need to be adjusted to identify the amounts that are attributable to the notional period of account commencing on 1 April 2017.

Any reduction for the disregarded period in the calculation of [tax-interest](#) and [tax-EBITDA](#) need to be made on a just and reasonable basis. It is expected that in most cases time apportionment would be a suitable allocation method.

## Group figures

In applying the Corporate Interest Restriction rules for the notional period of account commencing 1 April 2017 it will often be necessary to identify the amounts recognised in the consolidated accounts for that period. This will be relevant for:

- the calculation of [adjusted net group-interest expense](#) for the [fixed ratio debt cap](#) under the [Fixed Ratio Method](#); or
- the calculation of the [qualifying net group-interest expense](#) and [group-EBITDA](#) for the [group ratio percentage](#) and the [group ratio debt cap](#) under the [Group Ratio Method](#).

The commencement rules provide that a simple time apportionment in line with CTA 2010/s1172 should be used by default. However, if a time basis apportionment gives an unjust or unreasonable result, then the figures should be attributed to the periods on a just and reasonable basis. In applying a just and reasonable basis, consideration would need to be given as to the amounts that would be recognised for each notional period had the group prepared financial statements for each period.

## Financial statements ignored

Where a group draws up financial statements that are for a period that is longer than 18 months or which are drawn up more than 30 months from the start of the period then these are ignored for the commencement rules. This is in line with the general rules for [financial statements](#).



# CFM98330 Interest restriction: Commencement Rules: Repeal of Worldwide Debt Cap

## F(No.2)A17/Sch10/Para26

The Corporate Interest Restriction rules replace the existing [Worldwide Debt Cap rules](#). The Worldwide Debt Cap rules therefore cease to have effect for periods of account starting on or after 1 April 2017.

If a [worldwide group](#) draws up financial statements for a period that straddles 1 April 2017 then the Worldwide Debt Cap rules will cease to apply on the basis that the group has two notional periods of accounts as follows —

- a period of account beginning when the actual period of account starts and ending with the 31 March 2017;
- a period beginning with 1 April 2017 and ending when the actual period of account ends.

The Worldwide Debt Cap rules will then apply for the last time for the notional period of accounting ending 31 March 2017.

## Implications of the notional period of account

### Tested amounts

The group will need to aggregate the [financing expense amounts](#) and the [financing income amounts](#) for the group for the notional period of account ending 31 March 2017.

Where a group has a straddling period of account it is likely that notional period of account ending 31 March 2017 will not align exactly with the accounting periods of all the UK companies within the group.

In this situation the accounting periods for individual companies in the group are likely to extend beyond the notional period for which the rules are being applied. As a result, financing expense amounts and financing income amounts need to be adjusted to identify the amounts that are attributable to the notional period of account ending on 31 March 2017.

The rules for the calculation of [financing expense](#) and [financing income amounts](#) for a period require this attribution to be made on a just and

reasonable basis. It is expected that in most cases time apportionment would be a suitable allocation method.

### **Available amount**

In applying the Worldwide Debt Cap for the notional period of account ending 31 March 2017 it will be necessary to identify the amounts recognised in the consolidated accounts for that period for the calculation of the [available amount](#).

The rules governing the repeal of the Worldwide Debt Cap Rules mirror the commencement rules and provide that a simple time apportionment in line with CTA 2010/S1172 should be used by default. However, if a time basis apportionment gives an unjust or unreasonable result, then the figures should be attributed to the periods on a just and reasonable basis.

### **Meaning of worldwide group**

In most cases the [worldwide group for Worldwide Debt Cap](#) and [worldwide group for Corporate Interest Restriction](#) will be the same. However, the definitions are not exactly aligned and could therefore give different results. The rules governing the repeal of the Worldwide Debt Cap are naturally based on the Worldwide Debt Cap definitions.

### **Example**

A group prepares financial statements to 31 December each year.

As a result of the commencement provisions its financial statements for the year to 31 December 2017 are treated as being split as follows:

- There will be a three month notional period of account from 1 January 2017 to 31 March 2017 to which the Worldwide Debt Cap rules will apply.
- There will be a nine month notional period of account from 1 April 2017 to 31 December 2017 to which the Corporate Interest Restriction rules will apply.

# CFM98350 Interest restriction: Commencement Rules: Extended time limits

## F(No.2)A17/SCH10/PARAS27-33

There are a number of time limits that are extended for the first year of the rules.

Members of a group normally have six months from the end of a period of account for the [appointment of a reporting company](#) or the revocation of an appointment. This time limit is extended so that an appointment or revocation is valid if made by 31 March 2018.

Further, the filing deadline for making an interest restriction return is extended in the first year so that it is not before 30 June 2018.

Also, the following elections can be made by 31 March 2018 where they would otherwise be required to be made prior to that date:

- [Election to disapply s484](#) (which may set a group's period of account by reference to the single entity accounts of its ultimate parent)
- [Election to specify a period of account](#)
- [Transitional rules for infrastructure](#)
- [Election to be treated as applying the Disregard Regulations](#)

The other elections under the rules are typically made by the [reporting company](#) in the [interest restriction return](#).

# CFM98360 Interest restriction: Commencement Rules: Previous accounting and tax changes

## F(No.2)A17/Sch10/Para29-30

The Corporate Interest Restriction applies to amounts of [tax-interest](#) and [tax-EBITDA](#). These in turn are based on the amounts brought into account for the purposes of corporation tax in the tax return and computations of individual companies.

However, there are two specific exceptions that apply on transition to the rules where the amounts relate to changes in accounting and tax prior to 1 April 2017:

- The first exception applies where there has been a change of accounting policy and the period in which the new accounting policy applies, referred to as the later period, started before 1 April 2017. In this case the debits or credits brought into account under the [Change of Accounting Practice Regulations 2004 \(S.I. 2004/3271\)](#) in respect of that change of accounting policy are ignored for Corporate Interest Restriction purposes.
- The second exception applies to ignore transitional adjustments arising from F(No.2)A15/Sch7 that are being brought into account under Para115/116 (transitional adjustments relating to loan relationships) or Para119/120 (transitional adjustments relating to derivative contracts).
- These amounts are not therefore included as [tax-interest](#) or [tax-EBITDA](#) amounts under the regime.
- Likewise, these amounts would not be included as group-interest and group-EBITDA (relevant in respect of {changes in accounting} where an [alternative calculation election](#) has been made).

# CFM98370 Interest restriction: Commencement Rules: Group mismatches

The Group Mismatch Regulations address two situations where timing differences can arise between the way amounts are recognised in the group's financial statements and how they are recognised for accounting purposes by any member of the group.

They affect the calculation of [adjusted net group-interest expense](#) used in the [fixed ratio debt cap](#) and the [qualifying net group-interest expense](#) used in the [group ratio method](#).

## Fair value accounting or adjustments

The first situation concerns the case where, on commencement of the rules, a loan relationship is recognised in the group's financial statements such that:

- it is subject to fair value accounting or fair value adjustments as part of a fair value hedge in the group's accounts; and
- it is recognised at the amortised cost basis of accounting in the financial statements of the issuer company.

In this case, the financial statements for the worldwide group are treated as being prepared on the basis that they recognise the loan relationship on the amortised cost basis of accounting (without any adjustments being made for a fair value hedge).

## Debt buy-backs

The second situation concerns the case where the group had an external loan that was bought into the group prior to commencement of the rules, but where it still exists as between two group members.

There is likely to be a gain or loss on the 'redemption' of the loan from the group accounts perspective. However, at the entity level the two companies will record the loan at different carrying values. The effect of this is that no gain or loss is typically recognised at the entity level at the time the debt is bought into the group. Instead the gain or loss is recognised gradually over the remainder of the term of the debt as a differential in the effective interest rate on the two sides of the loan.

In this case, the financial statements of the worldwide group are treated as being prepared on the basis that the gain or loss on the derecognition of the

loan is spread over the remainder of the term of the loan, on a just and reasonable basis.

# CFM98380 Interest restriction: Commencement Rules: Power to make elections under the Disregards Regulations

## F(No.2)A17/Sch10/Para31

- The amounts of [group-interest](#) and [group-EBITDA](#) that are used for the [fixed ratio debt cap](#) and the [group ratio method](#) are calculated on the assumption that [regulations 7, 8 and 9](#) of the Disregards Regulations (S.I. 2004 / 3256) are applied. This 'disregards' fair value movements related to derivative contracts that have a hedging function, and instead recognises amounts in line with the hedged item.
- The calculation of these amounts is likely to be closely aligned with the amounts brought into account in the tax returns and computation of individual companies where companies have elected into regulations 7, 8 and 9 of the Disregard Regulations, or where the companies have designated hedging relationships that are highly effective in their financial statements.
- However, significant differences can exist where companies have not elected into the Disregard Regulations and either they have not designated a hedging relation in their accounts or there are significant amounts of hedge ineffectiveness.
- Many companies will have already decided whether to elect into regulations 7, 8 and 9 of the Disregard Regulations and are currently locked into this choice for a three year window. Given this the rules provide for an election to be made so that the Corporate Interest Restriction rules are applied on the assumption that the company had elected into regulations 7, 8 and 9.

## Form of the election

An election under Para31 needs to be made by 31 March 2018 and is irrevocable.

An election under Para31 only has effect if every UK company (except dormant companies) that was a member of the [worldwide group](#) as at 1 April 2017 makes the election.

A single person may make an election covering all the companies in the group as that date as long as they have the authority from each company to do so and it is clear from the election which companies the election applies to.

There is no prescribed form for the election. If the group has a Customer Compliance Manager (CCM), elections can be sent to them, otherwise see the CIR internet page for where to send elections.

## Application

Where the election has effect, the amounts of [tax-interest](#) and [tax-EBITDA](#) are calculated on the assumption that each company has elected into regulations 7, 8 and 9. The amounts of [interest allowance](#), [interest capacity](#) and disallowed interest follow on from this and are calculated in the normal way.

However, as a result of treating the company as if it had applied regulations 7, 8 and 9 it is possible that a company could be required to disallow an amount of [tax-interest expense](#) that would not actually feature in its tax return and computations.

Para31 uses the same mechanism as the election to disapply fair value accounting. So where this applies the company is treated as having a matching debit and credit. The debit amount can therefore be restricted under the rules, leaving the company to bring the credit into account for the period.

## Example

A company does not apply regulation 9 in its tax return and computations. It entered into an interest rate swap which operated as an undesignated cash flow hedge of a floating rate loan. The swap was closed out in the year ended 31 December 2016 and the resulting loss was recognised in its accounts and tax computation in that year. The loan is still in existence and is due to be repaid in 2020.

All the companies in the group make an election under Para31. As a result, the company is considered to have applied regulation 9 to the swap. This would have resulted in the loss on closing out of the swap to be spread over the remaining term of the loan. Assume that it would have been required to bring a loss of £100,000 into account for the period ended 31 December 2018.

In the event that the £100,000 is to be disallowed the company is treated as if it had a £100,000 debit and a £100,000 credit for the period. As a result, the £100,000 can be restricted leaving the £100,000 to be brought into account for the period. The £100,000 that is restricted can be carried forward and accessed in a later period where there is sufficient [interest capacity](#).



# **CFM98400 Interest restriction: Administration: Contents**

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# CFM98410 Interest restriction: Administration: Overview

This guidance deals primarily with the machinery provisions, in TIOPA10/SCH7A, but does not exactly follow the order of the paragraphs of the schedule.

The interest restriction provisions in TIOPA10/PT10 differ from the normal corporation tax regime in that the computational provisions work mainly at the level of the [worldwide group](#). Only once the group level computations have been made can disallowances of net tax-interest expense, or reactivations of [previously disallowed amounts](#), be allocated to UK group companies. SCH7A contains legislation designed to enable the efficient administration of these provisions.

Where a group is not subject to interest restriction and neither the group nor HMRC have appointed a [reporting company](#), the group has no filing obligation. However, if a group is subject to interest restriction in a period of account or needs to make an [election](#) that can only be made in an interest restriction return, or may wish to apply unused interest allowance for a period in a later period, it will need to appoint a reporting company and file an interest restriction return for the period.

## Interest Restriction Return

Central to these administrative provisions is the [interest restriction return](#) for a worldwide group's period of account. This contains basic information about the composition of the worldwide group, the key numbers from the group level computation, and the allocations of disallowances or reactivations to members of the group. In addition, a number of elections, which vary the manner in which the computational rules are applied, may be included in the return. Where there are no disallowances or activations it may be possible to file an [abbreviated return](#). The group has the freedom to file a revised return up to 36 months after the end of a period of account.

Where no interest restriction is due, a revised return may be submitted up to 60 months after the end of a period to establish the amount of the unused interest allowance for the period for potential use in a later period.

The contents of the interest restriction return and some detailed computational provisions are found in SCH7A/PT2.

The [period of account](#) is normally the period for which the ultimate parent of the group draws up consolidated financial statements. This may not

necessarily coincide with the CT Accounting Periods of UK resident members of the group.

### **Preliminary consideration of whether an interest restriction arises**

HMRC expects that groups that have [aggregate net tax-interest expense](#) clearly less than the de minimis amount, or which have aggregate net tax-interest income, will be able to establish with sufficient certainty that they are not subject to any interest restriction without the need to carry out detailed calculations. This may involve groups making reasonable estimates of their tax-interest position when considering whether the group is subject to any interest restriction in the return period, and whether an abbreviated return is appropriate. This administrative point is distinct from the use of [estimates within a full interest restriction return](#) (TIOPA10/SCH7A/PARA27).

Similarly, some groups with an aggregate net tax-interest expense above the de minimis amount may also be able to establish with sufficient certainty that they are not subject to any interest restriction, without the need to carry out detailed calculations. This will be the case where aggregate net tax-interest expense is above the de minimis amount, but clearly less than both 30% of tax-EBITDA and [adjusted net group-interest expense](#) (ANGIE). This may involve groups making reasonable estimates of aggregate net tax-interest expense, [aggregate tax-EBITDA](#) and ANGIE.

The same approach, of making a reasonable estimate rather than a precise calculation, may also be taken in respect of ANGIE for a group that could be subject to interest restriction. This would be appropriate where aggregate net tax-interest expense is close to or exceeds 30% of tax-EBITDA, but is clearly much less than ANGIE.

Groups with a customer compliance manager may wish to discuss their approach with HMRC as part of real-time working. For companies to which the Senior Accounting Officer provisions in FA09/SCH46 apply, appropriate tax accounting arrangements will include procedures to determine whether the group is subject to interest restriction, and if it is, to calculate that restriction accurately.

Note that it might be advantageous for a group to appoint a reporting company and submit an interest restriction return even where no interest restriction is due. This is because it may be possible to use [unused interest allowance](#) for a period of account which commences up to 60 months after the end of a period, but only if a [full interest restriction return](#) is filed for the earlier period of account and all intervening periods. It is possible for a group to submit [abbreviated returns](#) and later revise them to full returns, if necessary.

## Reporting company

The responsibility to file an interest restriction return falls on the [reporting company](#). This company would normally be appointed by the group. A company so appointed stays in place for subsequent periods of account. [HMRC may appoint](#) a reporting company for a [period of account](#) where no reporting company is in place, or may [replace a reporting company](#) that does not perform its obligations. If for some reason a group has no reporting company, but a disallowance is due, each UK group company must file its company tax return based on a [pro-rata apportionment](#) of the group's disallowance (which it will need to calculate). The procedures for the appointment of a reporting company are found in SCH7A/PT1.

It is anticipated that, in most cases, disallowances will be allocated at the discretion of the reporting company. However, as groups are defined primarily by reference to IFRS accounting, it is possible that a conflict of interest might arise, for instance, where a UK group company has a substantial external shareholding. Accordingly, where a company does not consent to discretionary allocation by the reporting company, either by not supporting the appointment of the reporting company, or by withdrawing consent, it may be allocated no more than a pro-rata amount of the disallowance (see SCH7A/PARA23 and SCH7A/PARA24).

Apportionments of interest reactivations are made on a full interest restriction return and only at the discretion of the reporting company. Rules determining the overall amount that may be reactivated for a group, and the maximum amounts that may be activated per company, including cases where company accounting periods do not coincide with the group period of account, and cases where companies are joining and leaving the group, are dealt with in PARAS25 and 26.

Any disallowances or reactivations allocated in an interest restriction return automatically flow through as amendments to a group company's tax return, regardless of any time limits that might otherwise apply. There is a default order for identifying the nature of tax-interest amounts that are disallowed or reactivated at company level, which the company may elect to vary in its own tax return.

## Enquiry Provisions

There are specific [enquiry provisions](#) in SCH7A/PT4, based on the company tax return enquiry procedures in FA98/SCH18, but modified to deal with the interest restriction returns. The serving of an interest restriction return enquiry notice does not open a company tax return enquiry into each UK group company, and is separate from any such enquiry. However, on settlement of

an interest restriction return enquiry, individual company returns may be amended. The scope of an enquiry may include the composition of a group, and there are procedures to deal with cases where HMRC considers that the composition of the group may have been incorrectly stated in the return. There are specific closure procedures, which may include the appointment of a reporting company for a different group from that outlined in the original interest restriction return.

SCH7A/PT5 provides for HMRC determinations, either where a reporting company fails to submit a return, or where a group fails to amend an interest restriction return in accordance with a closure notice.

There are penalties for failure to submit returns and, in some circumstances, for incorrect returns in SCH7A/PT2. These specific rules apply in place of the general provisions in FA09/SCH24. There is a duty to keep and preserve certain records, and penalties for failing to do so, set out in TIOPA10/SCH7A/PT3.

## **Information powers**

There are two sets of information powers. Those in SCH7A/PT6 are [exercisable by a reporting company](#), or a group company, on other members of a group, to gather information needed for filing an interest restriction return or company tax return (where there is no reporting company). Those in SCH7A/PT7 are [exercisable by HMRC](#) in checking an interest restriction return. They make reference to certain provisions of FA08/SCH36.

# **CFM98420 Interest restriction: Administration: Reporting requirements: Contents**

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# CFM98430 Interest restriction: Administration: Reporting requirements: The full interest restriction return

## TIOPA10/SCH7A/PARA20

The administrative rules facilitating compliance with the Corporate Interest Restriction legislation in TIOPA10/PT10 are built around an interest restriction return for a [period of account](#) of a [worldwide group](#), submitted by its [reporting company](#). The reporting company can submit a full interest restriction return via a digital form on the government gateway. For more information on this process, see the [CIR internet page](#).

A group is not obliged to file an interest restriction return unless it has appointed a reporting company. However, if the group is subject to interest restriction, compliance with the CIR regime is much simpler and the group gains flexibility in allocating restrictions. Further, HMRC has the power to appoint a reporting company if the group fails to do so, though it is not intended that this should be done on a routine or speculative basis. Where a reporting company has been appointed, but no restriction is due for a period, the reporting company may elect to submit an abbreviated return.

A full interest restriction return includes details of the composition of the group, the computation of any [interest restriction](#) or [reactivation cap](#), and an allocation of disallowances or restrictions to the UK group companies for their CT accounting periods that coincide with or overlap the group's [period of account](#). An [abbreviated return](#) can be submitted in some circumstances.

This section of the guidance sets out what is required to be included in a full return, where one is required by the conditions in TIOPA10/SCH7A/PARA20(2). The requirements are the same, whether the group is subject to interest restrictions for the period of account; or is not so subject, but has not elected to submit an [abbreviated return](#).

### **PARA20(3)(a)**

The name of the [ultimate parent](#) of the [worldwide group](#), see TIOPA10/S473(4)(b). Where the parent has a Unique Taxpayer Reference (UTR), it must be stated. The UTR is a 10 digit number issued by HMRC where a taxpayer first registers for self-assessment. The UTR for a company is allocated by COTAX, typically when HMRC is first notified or becomes aware of the existence of a UK company, or of the UK taxable presence of a non-UK company.



**PARA20(3)(b)**

The return period of the return - the period of account of the worldwide group see TIOPA10/S480. This may not necessarily coincide with the CT Accounting Period of some or all of the UK resident group members.

**PARA20(3)(c)**

The names and Unique Taxpayer References (where there is one) of all companies that were UK group companies at any time in the period of account. A [UK group company](#) is a company that is a member of the group and within the charge to UK corporation tax (TIOPA10/S492). Each UK group company should be identified as either a [consenting or a non-consenting company](#) for the period of account.

**PARA20(3)(d)**

A [statement of calculations](#). This is a key component of the along with cross-references to further guidance describing those amounts and how they are calculated.

**PARA20(2)(e)**

Where the group is subject to interest restrictions, the return must state this and specify the [total disallowed amount](#) (S373(2)). In this case, a statement of allocated interest restrictions (PARA22) must be attached to the interest restriction return.

**PARA20(2)(f)**

If the group is subject to interest reactivations for the period of account, this must be stated, as must the [interest reactivation cap](#) (S373(3)). A [statement of allocated interest reactivations](#) (PARA25) must be attached.

**PARA20(2)(g)**

Finally, there must be a declaration by the person making the return that the return is, to the best of that person's knowledge, correct and complete. (This does not prevent the inclusion of estimated information).

A return containing all of this information is a full interest restriction return.

# CFM98440 Interest restriction: Administration: Reporting requirements: The abbreviated interest restriction return

## TIOPA10/SCH7A/PARA20

The submission of an interest restriction return is only obligatory if a reporting company has been appointed, either [by the group](#) or [by HMRC](#). A group that is not subject to interest restriction is not obliged to file a return or appoint a reporting company. Groups or single companies not within a group whose [aggregate net tax-interest expense](#) falls below the de minimis limit of £2m per annum are likely to prefer this approach.

However, where a group that is not subject to interest restriction has filed an interest restriction return, whether abbreviated or full, it is permissible to submit a revised return, which must be a full return up, to [60 months](#) after the end of the period. This is to enable [unused interest allowance](#) to be accessed in later periods. Accordingly appointment of a reporting company and submission of a return is potentially advantageous.

Where a reporting company is in place, but the group does not expect to be subject to interest restriction in a period of account, it may elect under TIOPA10/SCH7A/PARA19 to submit an abbreviated interest restriction return rather than a [full interest restriction return](#). The election is made in the return, PARA12(3)(g), and relates to a period of account. An election made earlier may be revoked, in a subsequent full interest restriction return. The reporting company can submit an abbreviated interest restriction return via a digital form on the government gateway. For more information on this process, see the [CIR internet page](#).

Where an abbreviated interest restriction return is submitted for a period of account, it will not be possible to access the [interest allowance](#) for that period in a later period, S393. Where a group subsequently decides that it has a need to access that interest allowance it may submit a revised and full return, no later than 60 months after the end of the period of account - PARA9(2). An [abbreviated return](#) may include [elections](#) and a revised full return submitted later may include any elections for which the time limit has not passed.

The submission of an abbreviated interest restriction return is likely to be most appropriate for groups with the following characteristics:

- The group's [aggregate tax-interest expense](#) exceeds the £2m per annum [de minimis limit](#); but

- The level of [aggregate tax-EBITDA](#) and [adjusted group-interest expense \(ANGIE\)](#) are sufficiently high that no interest restriction will be due and;
- This is also expected to be the case in later periods, so that the group will have no need to bring forward unused interest allowance from earlier periods of account.

If the assumption in the third bullet point subsequently proves to be incorrect, the group may revoke its abbreviated return elections for earlier periods and submit revised and full returns for those earlier periods, so as to make unused interest allowance available. Note that the election must be revoked and full returns submitted not only for the period of account whose allowance is to be accessed, but also for any intervening periods.

A group could choose to submit a return even if its aggregate tax-interest expense is less than the de minimis amount if it considers it possible that it might later need to access unused tax allowance for this period. Note that although the de minimis amount for a period sets a minimum level of [interest capacity](#) for a period, it does not increase any interest allowance available to carry forward.

An abbreviated return must state that the group is not subject to interest restrictions for the return period. It must include the following items from a full return (PARA20(5)).

**PARA20(3)(a)**

The name of the ultimate parent of the worldwide group, see TIOPA10/S473(4)(b). Where the ultimate parent has a Unique Taxpayer Reference (UTR), it must be stated. The UTR is a 10 digit number issued by HMRC where a taxpayer first registers for self-assessment. The UTR for a company is allocated by COTAX, typically when HMRC is first notified or becomes aware of the existence of a UK company, or of the UK taxable presence of a non-UK company.

**PARA20(3)(b)**

The return period of the return - the period of account of the worldwide group see TIOPA10/S480.

**PARA20(3)(c)**

The names and Unique Taxpayer References (where there is one) of all companies that were UK group companies at any time in the period of account. A [UK group company](#) is a company that is a member of the group and within the charge to corporation tax (TIOPA10/S492). Each UK group company should be identified as a [consenting company or non-consenting company](#) for the period of account

**PARA20(3)(g)**

There must be a declaration by the person making the return that the return is, to the best of that person's knowledge, correct and complete. (This does not prevent the inclusion of estimated information, see PARA 27.)

A statement of calculations is not required.

There is no interest reactivation, so details are not required.

# CFM98450 Interest restriction: Administration: Reporting requirements: Statement of Calculations

## TIOPA10/SCH7A/PARA21

The statement of calculations forms a part of a [full interest restriction return](#) for a [period of account](#) of a [worldwide group](#), and draws together information from the group and its members that is taken into account in computing the group's [total disallowed amount](#) (TIOPA10/S373(2)) or [interest reactivation cap](#) (TIOPA10/S373(3)). The required elements are set out below, not in the order they appear in the legislation but, rather, in an order in which they might be collated and computed in preparing the calculations.

Not all of the items below will need to be included, according to whether the interest allowance is computed by the (default) [fixed ratio method](#) or an election is made to instead apply the [group ratio method](#).

The following items are to be included:

### TIOPA10/SCH7A/PARA21(a)

For each UK group company (a company that is a member of the group and within the charge to UK corporation tax (S492)),

(i) the company's [net tax-interest expense](#) or net tax-interest income (S389) for the [return period](#) (s494) and

(ii) the company's [tax-EBITDA](#) for the period (s406).

### PARA21(b)

The [aggregate tax-interest](#) income and aggregate tax-interest expense for the group (S390). These figures are derived by aggregating the net tax-interest expense or net tax-interest income of the UK group companies. One of these aggregate numbers will be zero.

### PARA21(f)

The [aggregate tax-EBITDA](#) for the group (S405), being the sum of the tax-EBITDA amounts for the UK group companies.

### PARA21(g)

Where the [interest allowance](#) is computed by the [fixed ratio method](#) and the limiting factor is the fixed ratio debt cap the [adjusted net group-interest expense](#) for the return period (ANGIE) S413, which is an accounting-based measure of the worldwide group's external net interest and similar expense.

**PARA21(h)**

Where an election is made to compute the interest allowance for the return period by the [group ratio method](#), the following three amounts:

- PARA21(h)(ii): The [qualifying net group-interest expense](#) for the return period (QNGIE), S414. This is an accounting-based measure of the entire worldwide group's external net interest and similar expense, with more exclusions than the adjusted net group interest, S410.
- PARA21(h)(iii): The [group-EBITDA](#), an accounting-based measure of EBITA for the entire worldwide group S401.
- PARA21(h)(i): the [group ratio percentage](#), S399, being the qualifying net group-interest expense (QNGIE) divided by group-EBITDA.

Where the group has also made a [group ratio \(blended\) election](#) under PARA14, the group ratio percentage should be adjusted as is required by S401 and the amount entered in respect of QNGIE should be the [blended net group interest expense](#) as determined by S402.

**PARA21(e)**

Whether or not an election is made to apply the group ratio method, the interest allowance for the return period S396.

**PARA21(d)**

The aggregate interest allowances of the group for earlier periods of account, so far as they are available in the return period (S393).

**PARA21(c)**

The [interest capacity](#) for the group for the return period (s392). This is the higher of:

- (i) the sum of the interest allowance for the period and the amounts brought forward from earlier periods that are still available, or
- (ii) the de minimis amount.

The interest allowance is computed by the fixed ratio method unless an election is made to apply the group ratio method.

# **CFM98460 Interest restriction: Administration: Reporting requirements: Elections that may be made in the return**

## **TIOPA10/SCH7A/PARAS12-19**

The following elections, if made, and revocations, where permitted, should be made in a [full](#) or [abbreviated](#) interest restriction return, which may be a revised return.

The election has effect for the period of account to which the return relates and according to the nature of the election may also have effect for later periods of account. Some elections may be revoked, in which case the revocation must be included in an interest restriction return. Where the election applies only for the single period, a revocation will be need to be included in a revised return for that period. Otherwise a revocation is included in an original or revised return for the period from which the revocation is to first have effect. Once an irrevocable election has been made in an interest restriction return for a period, submission of a revised interest restriction for the period cannot have the effect of revoking the election already made.

The detailed effects of the elections are covered in the guidance on the relevant parts of the calculation process. The [abbreviated return election](#) allows a group to submit a simplified return where there are no disallowances. The group ratio election, group ratio (blended) election and the group-EBITDA (chargeable gains) election are only relevant where [group ratio method is applied](#). The interest allowance (alternative calculation) election, interest allowance (non-consolidated investment) election, and interest allowance (consolidated partnerships) election affect the application of the group ratio method and may also be relevant where the fixed ratio method is applied, because they may change the computation of ANGIE ([adjusted net group-interest expense](#)) and thus the amount of the [fixed ratio debt cap](#).

The election to file an [abbreviated return](#) (TIOPA10/SCH7A/PARAS19 and 12(3)(g)) is made in the return. An abbreviated return may also include other elections. For instance a group ratio election could be included in an abbreviated return if it has the effect that no interest restriction is due. If a group would suffer no interest restriction whether or not a group ratio election is made, it has the further option of submitting an abbreviated (or full) return for a period without the election, remaining free to subsequently submit a revised full return including the election, if this would have the effect of increasing the unused interest allowance available to carry forward and use in a later period.

A [group ratio election](#) (PARAS 13 and 12(3)(a)) allows a worldwide group to substitute a measure of its external net interest etc. expense to EBITDA for the 30% applied under the [fixed ratio method](#), see s398. The election may only be made where a [reporting company](#) has been appointed and is made by that company. It may be revoked.

A [group ratio \(blended\) election](#) (PARAS14 and 12(3)(b)) is an election that may be made by a worldwide group that has made a group ratio election. This allows an alternative method of computing the group ratio, where a group (normally a joint venture) is held by a number of investors and cannot be made unless at least one investor is a related party and a member of a different worldwide group throughout the period of account. The group ratio is then a weighted average of the investor groups' applicable percentages (S401-403). The election may only be made where a reporting company has been appointed and is made by that company.

There is a fair degree of flexibility. The election is only likely to be beneficial where an investor group has a group ratio higher than that the group making the election would otherwise have. The election relates to a single period of account and may be revoked. The election can specify one or more investor group or groups and treat them as having made or not made further elections in computing their position under the CIR - subject to limitation where the election in question would have been irrevocable.

A [group-EBITDA \(chargeable gains\) election](#) (PARAS15 and 12(3)(c)) is an election to modify the manner in which [group-EBITDA](#) is computed in the manner set out in s422. The election may only be made where a reporting company has been appointed and is made by that company. Once made the election is irrevocable, but it only makes a difference in a period for which a group ratio election has effect.

An [interest allowance \(alternative calculation\) election](#) (PARAS16 and 12(3)(d)) is an election to change the way in which [group-interest](#) and [group-EBITDA](#) are computed by adjusting the accounting-based value of certain items, to a figure which is more likely to be closer to its measurement for UK tax purposes by applying the [alternative calculation provisions](#) in S423-426. The changes to the computation of group interest are relevant to the calculation of [adjusted net group-interest expense](#) in applying the [debt cap](#) under the [fixed ratio method](#). Both are relevant to the application of the [group ratio method](#). The election may only be made where a reporting company has been appointed and is made by that company. Once made the election is irrevocable.

An [interest allowance \(non-consolidated investment\) election](#) (PARAS 17 and 12(3)(e)) can only be made where the worldwide group has appointed a reporting company and is made by that company. It brings into effect the [non-](#)



[consolidated investment provisions](#) in S427 and 428 which have the effect of modifying the group ratio calculation by bringing into account amounts relating to non-consolidated associates and leaving out of account interest etc. amounts and profits from transaction between members of the principal group and those non-consolidated associates. It may also change the calculation of [adjusted net group-interest expense](#) in applying the [debt cap](#) under the [fixed ratio method](#). This election may be revoked.

An [interest allowance \(consolidated partnerships\) election](#) (PARAS18 and 12(3)(f)) treats an interest in a partnership as if it were accounted for by the equity method, applying s430. An election must identify a partnership interest. Further elections may be made in respect of other partnership interests. The election has effect for the current and subsequent periods of account and is irrevocable. The changes to the computation of group interest are relevant to the calculation of [adjusted net group-interest expense](#) in applying the [debt cap](#) under the [fixed ratio method](#). Where the [group ratio method](#) is applied, the computation of [group-interest](#) and [group-EBITDA may be changed](#).

# CFM98470 Interest restriction: Administration: Reporting requirements: Appointment of a reporting company by group

## TIOPA10/SCH7A/PARAS1-3

It is anticipated that in most cases where the Corporate Interest Restriction may be applicable, a group will choose to appoint a reporting company. TIOPA10/SCH7A/PARA1 provides the mechanism for making an appointment.

Even where no restriction arises, it may be beneficial for a reporting company to be appointed and for it to submit at least an [abbreviated return](#).

Only an eligible company may be appointed. This is a company that is not dormant and was a [UK group company](#) (a group member subject to UK corporation tax) for at least part of the return period. Any member of the group including, say, a non-UK [ultimate parent](#), is permitted to make the appointment. However, to be effective, the appointment must be authorised by at least 50% of the eligible companies (PARA1(5)). The legislation does not mandate a specific form of authorisation.

Once an appointment is made for a period of account of the [worldwide group](#) the appointment continues to be effective in later period of accounts unless the company is no longer eligible or the group revokes the appointment under PARA2 or, HMRC appoints a replacement under PARA4.

It is possible for a worldwide group to consist of a single entity: a [single company worldwide group](#), S473(4)(c). If such a company is subject to interest restriction, it could simply include the interest restriction and computation in its company tax return. But it may be advantageous for a single company that is likely to be affected by the corporate interest restriction provisions to appoint itself as reporting company for its group (of which it is inevitably the ultimate parent) and submit an interest restriction return. This enables it to benefit from [reactivations](#) of previously restricted tax-interest and to access [unused interest allowance](#) in a later period, processes that require the submission of a [full interest restriction return](#).

The appointment is made by means of notification to HMRC. This notification must be accompanied by a list of the companies that have authorised the notice and a statement that this represents at least 50% of eligible companies. This notification can be made to HMRC via a digital form through the

government gateway. For more information, see the HMRC [CIR internet page](#).

The corporate interest restriction legislation does not set out any specific procedures that need to be followed in order to meet the requirement in paragraph 1(4)(a) that the appointment of the reporting company is authorised by 50% of the eligible companies.

In essence what matters is that an individual submitting an interest restriction return that may bind members of the group (albeit subject to safeguards as described below) has the necessary authority from the group members which are supporting the appointment of the reporting company. Accordingly a similar level of authority will be appropriate when it comes to the appointment of a reporting company on behalf of a group. It is a matter for the group to determine whether a particular individual already has authority to do this on behalf of a company, or whether he needs to be explicitly given this authority.

For example, it may be the case that the group finance director, head of tax, or members of the tax team within a group may already have the authority to act on behalf of companies in the group in certain respects. Depending on the terms of this authority, this may be sufficient so that the individual can authorise the appointment of the reporting company, on behalf of the UK group company in question. In these circumstances the individual could submit a single document listing the companies that are authorising the appointment. By signing and submitting the document the individual represents to HMRC that they have the necessary authority. If the group has effective protocols for electronic "signatures", a hard copy document should not be necessary.

On the other hand it may be, for example where there are significant minority interests in subsidiaries, that no one individual has the existing authority to give the authority on behalf of all the UK group companies. In such circumstances, a more formal approach may be appropriate, to ensure that there is an individual who has explicit authority to bind each company. Or, possibly, a document with more than one signatory will be appropriate. What internal process are acceptable is a matter for the group and the officers of any subsidiaries in question to determine.

The notice may be accompanied by a statement setting out which (if any) of the companies signing the statement do not wish to be treated as [consenting companies](#) and therefore do not consent to discretionary allocations of interest restrictions by the reporting company.

The appointment must be made in the six months immediately following the end of the period of account - PARA1(4).

The procedure for revoking an appointment, in PARA2, is similar to that for an appointment. The revocation is by notice to HMRC and can be made by any member of the group. It must be authorised by at least 50% of the eligible companies in the group. Notice must be given no later than six months after the end of the period of account. The revocation has effect for the period to which it relates and all future periods.

In practice it is likely that an appointment will be revoked to have effect in a period of account later than one in which the original appointment was made. The revocation can be accompanied by the appointment of a different eligible company as reporting company.

PARA3 provides a power for the Commissioners to make regulations in relation to the appointment and revocation of reporting companies.

# **CFM98480 Interest restriction: Administration: Reporting requirements: Appointment by HMRC**

## **TIOPA10/SCH7A/PARA4**

TIOPA10/SCH7A/PARA4 allows HMRC to appoint a reporting company for a [period of account](#) of a [worldwide group](#). This may not be done when an appointment by the group has effect, whether in the period of account for which the reporting company was appointed or a later period where that appointment continues to have effect. The appointment cannot be made within the time limit for appointment by the group. It follows that, in practice an appointment by HMRC is most likely to be made more than 6 months after the end of a period account for which there is no valid appointment.

The company appointed must be a UK group company for at least part of the period of account and must not be dormant.

It is possible that HMRC will be uncertain what the correct period of account is. Accordingly the appointment can be made by reference to a date or dates that would begin, end or be contained within a period of account. This might happen if an enquiry into a company tax return revealed that it was a member of a group that might be subject to interest restriction, but at that time the composition of the group and the identity of the ultimate period and the period to which it drew up accounts was uncertain. HMRC could then appoint the company under enquiry as reporting company for its worldwide group, thereby requiring it to submit an interest restriction return for the group under PARA7.

An appointment by HMRC is valid only for the period of account to which it relates; unlike an appointment by the group, it does not carry forward to later periods. So, the group is free to make its own appointment for a later period.

An appointment by HMRC may be made at any time up to 36 months after the end of the period of account. A later appointment is permitted where an amount in a company tax return is still capable of being altered - see FA98/SCH18/PARA88. This is most likely to be the case where there is an open enquiry into a company tax return.

HMRC may also appoint a reporting company where new groups are identified in the course of an enquiry.

Many groups may not be subject to interest restriction. This may be because the group is small enough that its aggregate net tax-interest expense falls below the de minimis limit of £2m per annum, or because tax-EBITA and net group-

interest expense are sufficiently high, in relation to aggregate net tax-interest expense that no restriction arises. HMRC does not intend to appoint reporting companies on a routine or speculative basis, simply because a group appears not to have done so itself.

# **CFM98490 Interest restriction: Administration: Reporting requirements: Appointment of replacement by HMRC**

## **TIOPA10/SCH7A/PARA5**

There are circumstances where HMRC may appoint a reporting company to replace an existing company, whether that company was appointed by the group or HMRC. This power, in TIOPA10/SCH7A/PARA5 is primarily designed to ensure satisfactory compliance with the interest restriction legislation. The power can be exercised at any time.

For this to be possible either of two conditions must be satisfied.

- HMRC considers that the existing reporting company has not or will not comply with a requirement of Schedule 7A, or
- The existing reporting company has agreed that HMRC should exercise this power.

The company so appointed must have been a [UK group company](#) for some part of the period of account for which the original reporting company was appointed. The appointment is for a single period of account only and does not carry over to subsequent periods of account.

It is possible that a group might request HMRC to replace its reporting company for a period of account (with its agreement) after the expiry of the six-month time limit for revocation of an appointment in PARA2(4)(b). TIOPA10/Sch7A/PARA2(4)(b).

# **CFM98500 Interest restriction: Administration: Reporting requirements: Obligation to inform group members**

## **TIOPA10/SCH7A/PARA6**

When a reporting company is appointed, by whatever mechanism, it must inform all companies that were UK group companies for all or a part of the period of account of its appointment (TIOPA10/SCH7A/PARA6). This should be done as soon as reasonably possible after its appointment. The ultimate parent should also be informed if it is not itself a UK group company. The duty to comply is enforceable by each company that should be notified, rather than by HMRC.



# **CFM98510 Interest restriction: Administration: Reporting requirements: Power to require group members to provide information**

## **TIOPA10/SCH7A/PARA60**

In order to complete an [interest restriction return](#), a reporting company will need information about other UK group companies. It will also need to keep the UK group companies informed on certain matters. These requirements are addressed in TIOPA10/SCH7A/PARA60.

To this end, a reporting company may serve a notice on a company that was a UK group company at any time in a period of account, requiring it to provide the reporting company with the information it needs to perform its functions under the Corporate Interest Restriction PARA60(1). This duty is enforceable by the reporting company, rather than HMRC (PARA60(3)).

Conversely, where a reporting company has submitted an interest restriction return to HMRC, it must, as soon as is reasonably practicable, provide a copy of it to each company that was a UK group company at any time during the period of account (PARA60(4)).

Similarly, if the reporting company receives a closure notice from HMRC under PARA47 it must provide a copy to all UK group companies (PARA60(5)).

Both of these obligations are enforceable by a company that should have been provided a copy of the return or the closure notice, rather than by HMRC.

# **CFM98520 Interest restriction: Administration: Reporting requirements: Obligation to make a return and time limits**

## **TIOPA10/SCH7A/PARA7**

Where a reporting company is [appointed by a group](#) or [by HMRC](#) and is not a [replacement reporting company](#), it is required to submit an interest restriction return. If a reporting company is a replacement reporting company and no interest restriction return has by that time been submitted for a period of account, it takes on the obligation.

The return must be submitted by the filing date. This is the later of:

- 12 months from the end of the period of account; or
- Three months after the appointment of the reporting company.

Further, the return is of no effect unless received by HMRC before the later of

- 36 months from the end of the period of account; or
- Three months after the appointment of the reporting company.

There are exceptions to this as follows:

- In cases where a return has to be submitted in response to a closure notice and PARA50 applies, the return must be received within three months of the closure notice if it is to be effective. This overrides the limits in PARA7.
- Where a determination has been made by HMRC under PARA56 the return has effect if received within 12 months of the determination being made, despite the normal time limits.

# **CFM98530 Interest restriction: Administration: Reporting requirements: Revised returns and time limits**

## **TIOPA10/SCH7A/PARA8-9**

The Corporate Interest Restriction legislation allows groups considerable flexibility to revise returns, over an extended period. It is likely that in practice these revisions will mainly have the effect of changing allocations of restrictions or reactivations within the group, and that the calculation of group-wide figures will need revision less often.

However, the group-wide figures may need to be revised where there are UK group companies whose CT accounting periods are not coincident with the group's period of account. For instance where a UK group company has an accounting period that begins and ends 11 months after the beginning and end of the worldwide group's period of account, it is likely that [estimates may be included](#) in the original interest restriction return for a group, for later revision and finalisation.

### **Revised return permitted**

Accordingly where a reporting company has submitted an interest restriction return, TIOPA10/SCH7A/PARA8, permits the reporting company to submit a revised return. There is no limit on the number of revised returns that may be submitted. A revised return is an interest restriction return in its own right, rather than an amendment of an earlier return, and the other administrative provisions are applied on that basis. It supersedes any previous return. A revised return may be a full return even if it supersedes an [abbreviated return](#). The elections made may differ from those in a previous return unless this is otherwise not permitted, for instance because the election in question is irrevocable.

Any revised interest restriction return must indicate the manner in which it differs from the previous return.

The time limit for submitting a revised return reflects the time limits within which a return may be regarded as having effect, that is:

- 36 months from the end of the period of account; or
- Three months after the appointment of the reporting company.

An officer of Revenue and Customs may treat a revised return as having effect after these time limits have expired, where the revisions made give effect to the replacement of estimates by final figures (PARA 27(6)).

## Revised return required

There are circumstances in which a revised restriction return is required. One is where a member of a group amends or is treated as amending an amount contained in a company tax return. If this causes a change to the group-wide numbers in a submitted interest restriction return, the reporting company must submit a revised return. This return must be submitted within three months of the amendment or of the day in which the company tax return was treated as amended (PARA 8(4) and (5)).

A possible consequence of the issue of a closure notice (PARA47 or PARA51 [CFM98790](#) et seq.) is that a reporting company is required to submit a revised return. In this case PARA50(2) applies to substitute a different time limit. Then, in order to take effect, the return must be received within three months of the closure notice, see [CFM98800](#). This may be earlier or later than the [normal time limit](#).

## Extended time limit

An extended time limit (PARA9) applies in situations where:

- The reporting company has submitted an interest restriction return for the period, whether an abbreviated return or a full return; and
- The group is not subject to an interest restriction the period.
- In these cases the reporting company can submit a [full interest restriction return](#) for the period within five years of the end of the period.
- This extension allows groups to delay deciding on whether to make a full interest restriction return for a period, so to [carry forward unused interest allowance](#). The five year time limit aligns with the five year expiry of interest allowances being carried forward.

# **CFM98540 Interest restriction: Administration: Reporting requirements: Inclusion of estimates in return**

## **TIOPA10/SCH7A/PARA27**

The legislation acknowledges that the inclusion of estimated information in an [interest restriction return](#) may be a practical necessity where the accounting periods of a UK group company are out of alignment with the period of account of the worldwide group. For instance, where a worldwide group's period of account ends on 31 December 2018, but a UK subsidiary has a 30 November year end, it will be necessary to include a share of various figures for its accounting period running from 1 December 2018 to 30 November 2019, determined on a just and reasonable basis.

There is, however, a requirement to disclose the use of estimated information. Under TIOPA10/SCH7A/PARA27, an interest restriction must identify any estimated information.

In some cases, the reporting company may choose not to compute an amount exactly, because the amount will not affect any of the amounts required to be included in an interest restriction return. For instance, PARA21(g) does not require the amount of the adjusted net group interest expense (ANGIE) to be included in the [statement of calculations](#) where the interest allowance is determined by the fixed ratio percentage of aggregate tax-EBIDA, rather than the debt cap. If an approximate computation makes it clear that the debt cap cannot be the limiting factor, such use of an estimate does not constitute the use of estimated information in the return and no disclosure is needed. The position should be obvious from the lack of a figure for ANGIE in the return. However, if the group wishes to use [excess debt cap](#) brought forward in the subsequent year, it will need to provide a detailed computation in the materials supporting the return for that year.

Further, if a return still contains estimated information 36 months after the end of the period of account to which the return relates, the reporting company must notify HMRC to this effect within 30 days. This notification must identify the estimated information, and indicate when the reporting company expects the information to become final.

There is a £500 penalty for failure to comply with this requirement.

HMRC may treat a revised interest restriction return as having effect even where submitted after expiry of the normal time limits in PARA8(3), where the revisions are restricted to those necessary to take into account the

replacement of estimates with revised figures, the officer is satisfied that the revisions could not have been made before expiry of the normal time limit, and the reporting company had met the notification requirement.

# **CFM98550 Interest restriction: Administration: Reporting requirements: Correction of return by HMRC**

## **TIOPA10/SCH7A/PARA28**

TIOPA10/SCH7A/PARA28 provides a power for HMRC to correct an error in an interest restriction return. This parallels the corresponding power in relation to a company tax return in FA98/SCH18/PARA16.

This power may be used to correct obvious errors or omissions in the return or anything else in the return that HMRC has reason to be incorrect in the light of information available. As a practical matter this power to correct would only be exercised where HMRC considered that an [interest restriction return enquiry](#), was unnecessary or inappropriate.

The correction is made by notice to the reporting company and must be made within 9 months of submission of the return.

The correction can be overridden by the reporting company by:

- Revising the return so as to reject the correction; or
- Where it is more than 36 months after the end of the period of account (the normal time limit in for submitting a revised return under TIOPA10/SCH7A/PARA8(3)(a)) but within 3 months of the issue of the notice of correction, by giving notice of rejection of the correction to HMRC.

If HMRC considers that the company should not have rejected the correction it can pursue the matter by opening an enquiry.

# **CFM98560 Interest restriction: Administration: Reporting requirements: Revenue determinations**

## **TIOPA10/SCH7A/PARA56, 57**

HMRC may make a determination under TIOPA10/SCH7A/PARA56, where HMRC considers that a group may be subject to interest restriction, the determination date has passed and one of three conditions is met. This gives rise to disallowances of net tax-interest expense even though no [interest restriction return](#) has been filed. Typically the determination will be designed to trigger the submission of a return. This power parallels that in FA98/SCH18/PARA36 in relation to failure to file a company tax return

If a reporting company has been appointed for a worldwide group, by a member of the group or by HMRC, and that appointment has effect, the determination date is the filing date; otherwise it is 12 months after the end of the period of account. The filing date is set by PARA7(5) at 12 months after the end of the period of account or, if later, 3 months after the appointment of the reporting company.

The conditions are:

- No appointment of a reporting company has effect for the period; or
- There is a reporting company, but no interest return has been submitted for the period of account; or
- There is a reporting company, an interest return has been submitted for the period of account, but it does not meet the requirements of PARA20, see [CFM98430](#).

The determination is made on a company by company basis, rather than as a single determination for the group as a whole.

HMRC must determine, to the best of their information and belief, a UK group company's pro-rata share of the group's interest restriction and, where necessary, its allocation between accounting periods. If the allocation of interest restriction to a company accounting period is not zero, the company must leave out of account tax-interest amounts equal to that allocation.

HMRC must send notice of determination both to each affected UK group company and to the reporting company.



Where a notice of determination is given under PARA56 a company is treated as having amended its return in accordance with the determination - PARA70(2).

The making of determinations under PARA56 is an option open to HMRC where a group subject to interest restriction has obviously failed to comply with the corporate interest restriction legislation by not submitting any return or by submitting a return that plainly does not meet the requirements set out in the legislation. It is also possible that an interest restriction return will be non-compliant as a result of inaccuracies. However, if HMRC consider it likely that an interest restriction return is inaccurate, the normal response would be the opening of an enquiry into the IRR, rather than the issue of a determination under PARA56.

Similarly if a reporting company becomes aware of an error in an interest restriction return, it may submit a [revised return](#), within the time limit allowed. This is likely to be much more efficient than having all UK group companies subject to restriction amend company tax returns in accordance with S376.

No determination under PARA56 may be made more than three years after the filing date for the return.

A revised return may be submitted following a determination either:

- within the normal time limit (36 months after the end of the period of account or, if later, 3 months after the appointment of a reporting company) or,
- if later, up to 12 months after the notice, PARA57.

For HMRC's power to make determinations under PARA58 following issue of a closure notice, and a reporting company's failure to submit a return in accordance with that closure notice, see [CFM98870](#).

# **CFM98570 Interest restriction: Administration: Reporting requirements: Consenting and non-consenting companies**

## **TIOPA10/SCH7A/PARA10, 11**

The definition of a [worldwide group](#) in TIOPA10/S473 is based on IFRS accounting. It follows that there may be entities in a worldwide group with substantial external stakeholders, over which the [ultimate parent](#) does not have unfettered control. This leaves open the possibility of conflicts of interest between different members of a group. In recognition of this possibility, the legislation contains provisions to enable such potential conflicts to be managed.

In particular, it is appropriate that UK group companies should have protection against, say, a disproportionately high allocation of the group's disallowances. But, by way of balance, it should not be possible for a dissenting group member to disrupt efficient administration of the provisions by a reporting company. The legislation is designed to achieve such a balance, and the concept of consenting and non-consenting companies (TIOPA10/SCH7A/PARA10) is a part of this design.

Broadly speaking, a consenting company is a company that has agreed to accept and be bound by discretionary apportionments of tax-interest by the reporting company. A non-consenting company has not so agreed. Its basic protections are that it may not be apportioned more than its pro-rata share (PARA23) of the group's total disallowed amount, and may elect to file on a basis that differs from that in the group's [interest restriction return](#) (S375).

According to PARA10(2), a company is a consenting company in relation to a worldwide group's interest restriction return if it has notified the reporting company and HMRC to this effect and has not notified the reporting company and HMRC that it no longer wishes to so consent. To simplify administration, PARA11 treats a company as having made the necessary notifications where it is listed as a company that has authorised the appointment of a reporting company and, in so doing, has not indicated that it wished to be treated as non-consenting company - PARA1(7). This is the case even if the appointment was originally made for an earlier period of account, but is still in effect.

Any company that has not taken the steps that would make it a consenting company will be a non-consenting company - PARA10(4).

Irrespective of whether a company became a consenting company by giving specific consents, or by consenting to appointment of the reporting company, it may become a non-consenting company by notifying the reporting company and HMRC to this effect - PARA10(2)(b). Equally, a company that was treated as a non-consenting company may cease to be so, in relation to future interest restriction returns, including revised returns, by notifying the reporting company and HMRC to this effect.

It is also open to a non-consenting company to [elect](#), under S375(3), that it does not accept the allocated disallowance. It must then submit or amend its company tax return for each relevant period of account to include its own computation of the disallowance due, on a pro-rata basis. Such an election has no effect on the position of the other members of the group.

# **CFM98580 Interest restriction: Administration: Reporting requirements: Statements of allocated interest restrictions**

## **TIOPA10/SCH7A/PARA22**

Where a [reporting company](#) concludes that the total disallowed amount for the worldwide group is more than zero, (TIOPA10/S373(2)), a statement of allocated interest restrictions must be attached to the return - TIOPA10/SCH7A/PARA22.

### **Contents of the statement of allocation**

In the statement of allocated interest restrictions, the reporting company must:

- list one or more companies that were UK group companies at some time during the period and which had net tax-interest expense;
- specify the disallowance of tax-interest allocated to each;

and, in cases where company accounting periods do not align with the worldwide group's period of account,

- specify the amounts allocated to each relevant accounting period (company accounting period overlapping or contained within the worldwide group period of account, see S471); and
- show the total amount so allocated.

### **General rules about allocations**

The amount allocated to a UK group company for a worldwide group period of account is referred to as the company's allocated disallowance for the return period - PARA22(2). This may be further split between company accounting periods under PARA22(5), as above. The amount allocated to a company accounting period is a company's allocated disallowance for its accounting period – PARA22(6).

PARA18(4) requires the sum of the allocated disallowances to equal the total disallowed amount, (S373(2)).

The allocated disallowance of a company for a return period (the worldwide group period of account for which the return is submitted) may not be a

negative amount, and must not exceed the net tax-interest of the company for the period (S389). This figure will be included in the statement of calculations which forms part of the interest restriction return.

The allocated disallowance of a company for a relevant accounting period may not be a negative amount, and must not exceed the net tax-interest of the company for the return period that is referable to the accounting period. The sum of the amounts allocated to a company's relevant accounting periods, for a period of account must equal the company's allocated disallowance for the return period.

### **Special rules relating to non-consenting companies**

In addition to the rules in the previous section, further rules apply in relation to allocations to a non-consenting company. These rules limit the amount of the group's total disallowed amount that can be allocated to a non-consenting company. The purpose of these limits is to prevent a disproportionate allocation of disallowance to a non-consenting company. Such an allocation might work unfairly to the detriment of a minority stakeholder in the non-consenting company.

To this end the allocated disallowance of a non-consenting company for the return period may not exceed its pro-rata share of the group's total disallowed amount – in accordance with PARA22(3)(b). For the computation of the pro-rata share see [CFM98590](#). There are rules to determine the allocation of this pro-rata share between relevant accounting periods.

It is open to a non-consenting company to elect, under S375(3), that it does not accept the allocated disallowance. It must then submit or amend its company tax return for each relevant period of account to include its own computation of the disallowance due, on a pro-rata basis. Such an election has no effect on the position of the other members of the group; they are still required to submit or amend company tax returns for relevant accounting periods in accordance with the reporting company's statement of allocation.

### **Identification of disallowed amounts**

There is a default order in which different classes of tax-interest are disallowed in a company's tax return. The company can [elect to override this default order of disallowance](#). TIOPA10/S377.

# CFM98590 Interest restriction: Administration: Reporting requirements: Calculating pro-rata allocations per company

## TIOPA10/SCH7A/PARA23

Computing pro-rata amounts may involve two steps. The first is a computation of the pro-rata amount for a non-consenting UK group company for [a period of account](#). Then, if the company's accounting periods do not coincide with the worldwide group's period of account, it is necessary to allocate the amount between accounting periods of the non-consenting company.

The computation of a [non-consenting company's](#) pro-rata share for a period of account is determined by a simple formula in TIOPA10/SCH7A/PARA23. The formula is a simple  $A \times B/C$ , where:

- Amount A is the total disallowed amount (TIOPA10/S373(2)) for the worldwide group
- Amount B is the net tax-interest expense of the company for the period of account
- Amount C is the sum of the net tax-interest expense amounts for the period of account for all companies that have net tax-interest expense - a company with net tax-interest income is treated as having net tax interest of zero and its net tax-interest income is not taken into account in the computation

If the company does not have net tax-interest expense, its pro-rata allocation is zero.

# **CFM98600 Interest restriction: Administration: Reporting requirements: Allocation pro-rata to accounting periods**

## **TIOPA10/SCH7A/PARA24**

Where a UK group company is allocated a pro-rata amount of interest restriction for a [period of account](#) and it does not have a single accounting period that coincides with the period of account of the worldwide group, it is necessary to allocate that pro-rata allocation between its relevant accounting periods. A relevant accounting period is defined in TIOPA10/S471 as an accounting period that falls wholly or partly within the period of account of a worldwide group.

As in the case of allocation of the total disallowed amount between companies, the allocation of a company's pro rata amount between accounting periods by TIOPA10/SCH7A/PARA24 is determined by an  $A \times B/C$  formula, but with different definitions of A, B and C as follows:

- Amount A is the company's pro rata share of the worldwide group's total disallowed amount for the period of account (the return period).
- Amount B is the net tax-interest expense of the company for the period of account
- Amount C is the sum of the net tax-interest expense amounts for each relevant accounting period.

Where there is net tax-interest income, that is treated as tax-interest expense of zero and the net tax-income is not taken into account in the apportionment.

It should be noted that a company's relevant accounting period may straddle more than one period of account of the group. Only the net tax-interest expense attributable to the part overlapping the return period is taken into account. Tax-interest income and expense amounts for the entire accounting period will have been split between the parts of that period that overlap different periods of account, by leaving out of account amounts that fall in [disregarded periods](#), determined on a just and reasonable basis by reference to disregarded periods, see TIOPA10/S382(6) - (8).

# **CFM98610 Interest restriction: Administration: Reporting requirements: Statements of allocated interest reactivations**

## **TIOPA10/SCH7A/PARA25**

Where a group has been subject to interest restriction in the past, and in a later [period of account](#) the interest allowance for the group (TIOPA10/S396) exceeds the group's [aggregate net tax-interest expense](#) (S390), interest expense that has previously been disallowed may be reactivated.

In this situation, the reporting company will be required by TIOPA10/SCH7A/PARA25 to submit a statement of interest reactivations in which the amount that may be reactivated is allocated between UK group companies. According to S379(1), a company may benefit from a reactivation of interest in a period of account only where.

- A [full interest restriction return](#) is submitted by a reporting company for that period of account;
- The return contains a statement that the group is subject to interest reactivations in the return period; and
- The return complies with the requirements of TIOPA10/SCH7A/PARA20(3) including, in particular, the inclusion of a statement of allocated interest reactivations.

Reactivated interest allocated to a company enables it to bring into account disallowed tax interest amounts from earlier periods. The rules governing how this is calculated and limited are set out at [CFM98620](#).

There are no differences between the arrangements for consenting and non-consenting companies.



# **CFM98620 Interest restriction: Administration: Reporting requirements: Computing disallowed tax-interest available for reactivation**

## **TIOPA10/SCH7A/PARA25**

The calculation of interest reactivations at company level can be somewhat complicated. This is because the interest reactivation cap is a group attribute for a worldwide group period of account. By contrast, the total disallowed tax-interest expense brought forward is a company attribute, as at the beginning of a company accounting period. The rules need to ensure the correct interaction between the two, even where company accounting periods do not coincide with a group's period of account (the return period), and where companies join or leave the group during the course of the company's accounting period or the group's period of account.

Against this background, there are two factors limiting interest reactivations - one determined at a company level, and the other across the group as a whole. Subject to these limits, the group is required to reactivate the maximum possible amount of tax-interest expense for the period of account. This maximum amount is the lower of:

- The sum of the amounts available for reactivation of each company for the return period (TIOPA10/SCH7A/PARA25(4)(a)); and
- The interest reactivation cap for the group – PARA25(4)(b) and s373(3)).

The sum of the reactivations allocated by the reporting company in a statement of allocations must equal this amount - TIOPA10/SCH7A/PARA 25(4).

The amount allocated to a company in the statement must not exceed its maximum amount available for reactivation (TIOPA10/SCH7A/PARA25(3)), and cannot be a negative amount.

A principle underlying these rules is that a group should reactivate amounts at the earliest possible opportunity; it cannot hold over amounts that could have been reactivated to a later period.

The group's interest reactivation cap is a limit that works across the group as a whole. It is simply the interest allowance of the group for the period (TIOPA10/S396), less the aggregate net tax-interest of the group for the

period (S390). These figures relate to group periods of account, not company accounting periods, and do not take into account any amounts relating to other periods of account.

The other limits work per company and by reference to company accounting periods. They are driven primarily by the aggregate allocated disallowances of a UK group company for earlier accounting periods which have not previously been reactivated.

The exception is the company's interest reactivation cap (PARA26(2)(b) and PARA26(5)). The reactivation amount allocated to a company for a period of account cannot exceed this overriding limit. It is the group reactivation cap for the period of account, multiplied by the proportion of that period of account for which the company is a UK group company.

One effect of this limit is to prevent a disproportionate reactivation amount being allocated to a company that leaves a group during a period of account.

Subject to that overriding per period of account limit, the amount available for reactivation by a UK group company in an accounting period is given by a formula,  $A + B - C + D - E$ , explained below.

A is the total disallowed [tax-interest expense](#) brought forward from earlier periods. This is the aggregate amount disallowed in earlier accounting periods, as reduced by any amounts that had been reactivated in earlier periods. This is an attribute of the company, so this figure may include allocated disallowances for earlier accounting periods when it was a member of a different group.

In the straightforward case of a company that does not change group, and which has an accounting period that coincides with the group period of account, the amount available for reactivation is simply amount A.

B is the amount of tax interest expense that the company has to leave out of account in the same accounting period, but for an earlier period of account of the same group. So in the earlier period of account the reporting company allocates disallowances, but in the later it allocates reactivations and the company accounting period straddles the two periods of account for the group. This increases the amount available for activation in the second part of the accounting period (in the worldwide group's return period). So, whilst a group cannot have disallowances and reactivations in the same period of account, it is possible for a company to have both activations and disallowances in the same accounting period - due to the interaction of the rules for groups and companies.

The other positive amount, D, only comes into play where a company becomes a member of the worldwide group during a relevant accounting period (as defined in TIOPA10/s 471). This is an accounting period part or all of which falls within the group's period of account. Amount D is any disallowance allocated to it for the same accounting period, but before it joined its current worldwide group.

The other amounts, C and E, reduce the amount that may be reactivated in the relevant accounting period.

C is the converse of B. It is the amount of tax-interest the company is able to bring into account (as a reactivation) in the same period of account, but relating to an earlier period of account of the worldwide group.

Like amount D above, E only comes into play where a company becomes a member of the worldwide group during a relevant accounting period. It is the converse of D: the amount of tax-interest the company is able to bring into account (as a reactivation) in the same accounting period, but before it joined its current worldwide group.

There is a default order in which different classes of tax-interest may be reactivated, which the company can elect to override, see [CFM98690](#).

# **CFM98625 Interest restriction: Administration: Reporting requirements: Conclusiveness of interest restriction return amounts**

## **TIOPA10/SCH7A/PARA76**

TIOPA10/SCH7A/PARA 76 sets out the circumstances in which an amount stated in an [interest restriction return](#) may be treated as conclusively determined.

An amount in an interest restriction return that has become conclusive is one that can no longer be altered and this will be the case where all of the following apply:

- The interest restriction return in which the amount is included has not been superseded by a subsequent interest restriction return.
- The "applicable time limit" has passed. This is the latest time at which a revised interest restriction return may be submitted, normally the later of 36 months after the end of a period of account or 3 months after the appointment of a reporting company but, if later, 12 months after the issue of a determination under PARA36.
- The completion of any enquiry into the interest restriction return.
- Where a closure notice issued on completion of an enquiry includes a statement of steps that must be completed (PARA 49(2)(b)) the 30-day period for making an appeal against the closure notice has passed.
- Finally, if an appeal is made, the appeal has been finally determined.

PARA76 does not limit the power of HMRC to open an interest restriction enquiry under extended time limits [CFM98750](#), nor to make determinations under PARA 56 [CFM98560](#), nor PARA58 [CFM98870](#).

However if an amount is also stated in a company tax return, the provisions of FA98/SCH18/PARA88 would normally apply instead. But, PARA 88(9) of that Schedule (inserted by F(X)/SCH(X)/PARA4) provides that nothing in PARA88 affects the operation of the corporate interest restriction in TIOPA10/PT10. Accordingly, where a company tax return is amended or treated as amended, this has effect, notwithstanding the normal time limit for amending a company tax return in FA98/SCH18/PARA15(4). Guidance on the manner in which

amounts in an interest restriction return are given effect at company level is given at [CFM98630](#) et seq.

# **CFM98630 Interest restriction: Administration: UK group company: Contents**

[CFM98635 Interest restriction: Administration: UK group company: Relevant accounting period](#)

[CFM98640 Interest restriction: Administration: UK group company: Disallowances for consenting companies](#)

[CFM98650 Interest restriction: Administration: UK group company: Disallowances for non-consenting companies](#)

[CFM98660 Interest restriction: Administration: UK group company: Items of income to be left out of account](#)

[CFM98670 Interest restriction: Administration: UK group company: Disallowed tax-interest amounts carried forward](#)

[CFM98680 Interest restriction: Interest restriction: Administration: UK group company: Reactivation of disallowed tax-interest amounts carried forward](#)

[CFM98690 Interest restriction: Administration: UK group company: Identification of reactivated items of income](#)

[CFM98700 Interest restriction: Administration: UK group company: Set off of disallowances and reactivations](#)

# **CFM98635 Interest restriction: Administration: UK group company: Relevant accounting period.**

## **TIOPA10/S490.**

The corporate interest restriction computations are prepared for a worldwide group's period of account. However, companies are taxed by reference to accounting periods, as defined in CTA09/S9-12. A UK group company's accounting period will not necessarily coincide with its [worldwide group's period of account](#), so it is necessary to form a link between the two. Key to this linkage is the straightforward definition of a relevant accounting period in TIOPA10/S490:

*"For the purposes of this Part a "relevant accounting period" of a company, in relation to a period of account of a worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group."*

The guidance below sets out how amounts relating to a worldwide group's interest restriction or [reactivation cap](#) for a period are given effect at the level of the UK group companies for the relevant accounting periods linked to that period of account.

Conversely, in computing the group's [aggregate tax-interest expense](#) and [aggregate tax-EBITDA](#), it is necessary to look at the amounts for each company's relevant accounting periods, leaving out of account amounts that relate to [disregarded periods](#) that do not fall within the group's period of account.

# **CFM98640 Interest restriction: Administration: UK group company: Disallowances for consenting companies.**

## **TIOPA10/S375(1) and (2), SCH7A/PARAS70, 70A.**

In straightforward situations, where interest restrictions arise a reporting company will submit a [full interest restriction return](#), either the original return or a revised return. If the return states that the group is subject to interest restriction for the [period of account](#) to which it relates and the [statement of allocated interest restrictions](#) comprised in the return allocates a disallowance to a [consenting company](#) for an accounting period, that company must leave out of account tax-interest equal to that disallowance. The amount allocated to a consenting company is at the discretion of the reporting company.

Note that although the interest restriction return is for a [worldwide group](#) period of account, the restrictions allocated in the statement of allocated interest restrictions are for a relevant accounting period of the UK group company in question that falls wholly or partly within that period of account. It follows that a single accounting period may be impacted by disallowances for more than one worldwide group period of account - or even for different worldwide groups. It is also possible that there might be a disallowance and reactivation in the same period of account. For how these situations are dealt with see [CFM98200+](#).

According to the legislation as enacted in F(2)A 2017, the company to which the disallowance is allocated is treated as having amended its company tax return for the accounting period to this effect. However, this is changed by amendments to TIOPA10/SCH7A in F(2)A17/SCH8/PARAS15-17.

### **Company tax return amendment procedure**

Where a company has submitted a company tax return and an interest restriction return has been submitted that causes information included in the tax return to be incorrect, PARA70(1A) requires to company to amend its tax return so as to correct the information.

In the first instance, where the change results from the allocation of a tax-interest restriction or a reactivation the amounts to be disallowed or reactivated follow the default rules in S377 or S380. Alternatively, the company may elect to override the default rule and substitute its own identification.



If no event supersedes the requirement to amend the return, the company must amend its company tax return by the later of:

- 3 months of the submission of the interest restriction return; and
- the normal time limit for amending a company tax return in FA98/SCH18/PARA15(4). This is usually 24 months after an accounting period, but may differ where company periods of account are long or where the notice requiring the filing of a return was served late.

### **Consequences of failure to amend return**

If the company fails to amend its return within this time limit (and no other event, such as the submission of a revised interest restriction return, or the making of a valid election under s377 or S380, has intervened to supersede the requirement to amend the company tax return), PARA70A provides that:

- the company becomes liable to a penalty of £500. The penalty is administered in the same way as a penalty for [failure to deliver an interest restriction return](#).
- HMRC may amend the company tax return, within a time limit of 12 months.
- If the company disagrees with the HMRC amendment, it has three months in which to make its own amendment.

After this process, the company may still amend its return if, within the applicable time limits, it makes an election under s377 or S380 or a revised interest restriction return is submitted which, once more, renders its company tax return incorrect.

For the position where no interest restriction return or a non-compliant return is submitted, see [CFM98654](#).

## **CFM98650 Interest restriction: Administration: UK group company: Disallowances for non-consenting companies.**

### **TIOPA10/S375(2) - (5), SCH7A/PARAS 68, 69**

In some groups there may be one or more [non-consenting companies](#) that have not consented to discretionary allocations of the group's interest restriction by the reporting company. In such a case the reporting company may submit a [full interest restriction return](#), which states that the group is subject to interest restriction for the [period of account](#) to which it relates and in which the [statement of allocated interest restriction](#) comprised in the return allocates a disallowance to a [non-consenting company](#) for an accounting period. Such an allocation may not exceed the pro-rata share of the interest restriction for the company accounting period - TIOPA10/SCH7A/PARA22(3)(b).

In the absence of an election, where a company tax return has been submitted but becomes incorrect because of the submission of an interest restriction return, a non-consenting company is required to amend its company tax return in the same manner as a consenting company.

Where the company makes the election permitted by S375(3), and its pro-rata share of the total disallowed amount is not nil, it must leave out of account its pro-rata share of the group's disallowance, rather than the amount allocated by the reporting company.

It is anticipated that such elections will be uncommon, because the reporting company may not in any case allocate more than a pro-rata share of the tax-interest restriction in the return. An election might be made, for instance, if the non-consenting company disagrees with the reporting company's computation of the worldwide group's interest restriction, or if it considers that the reporting company has not correctly identified the composition of the group and that this has led to the calculation of an incorrect pro-rata amount.

The making of the election by a non-consenting company has no effect on the tax position of the other UK group companies in the worldwide group; the interest restrictions to be given effect in their company tax returns remain as allocated by the reporting company. There is no requirement for the non-consenting company to inform the reporting company of its election. Should HMRC be concerned about any discrepancy, it is open to an officer of Revenue and Customs to open an enquiry into the non-consenting company's

company tax returns for relevant periods, or into the group's interest restriction return, or both.

The election must be made by:

- the filing date for an original interest restriction return (which is determined by PARA7(5) as the later of 12 months after the end of the period of account or 3 months after the date of appointment of the reporting company); or,
- if later (most likely in relation to revised interest restriction returns), 3 months from receipt of the interest restriction return by an officer of Revenue and Customs.

The election is made in the non-consenting company's company tax return (PARA68(a)) and, where a company tax return has already been submitted for the accounting period, the company is permitted by PARA69(1) and (2) to amend its return to include the election, notwithstanding the time limit in FA98/SCH18/PARA15(4). The company must also amend its company tax return to give effect to the election within the same time limit and if it fails to do so, it becomes liable to a penalty of £500 - 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 by the company as a single process.

No particular form is required for the election; it must simply be clear and unambiguous. In the computations supporting the company tax return, the company will need to set out its computation of the worldwide group's interest restriction in the same level of detail as would be included in the [statement of calculations](#) in an interest restriction return (PARA21) and set out the calculation of its pro-rata share (PARAS 23 and 24).

An election under S375 may be revoked. In this case the company tax return must be amended accordingly, within the same time limits and potentially subject to the same penalty.

# **CFM98654 Interest restriction: Administration: UK group 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:

- E. No appointment of a reporting company has effect for the period;
- F. The appointment of a reporting company has effect, but no interest restriction return has been submitted; or

G. 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](#).

# **CFM98657 Interest restriction: Administration: UK group company: Provision of information to other group companies where there is no reporting company**

## **TIOPA10/SCH7A/PARA61**

Where there is no appointment of a reporting company in effect for a worldwide group, but interest restrictions arise, a UK group company will need information from other members of the group to enable it to compute the restriction due and submit an accurate company tax return. Just as the TIOPA10/PARA60 provides a power to enable a reporting company to require other members of the group to provide information to assist it in preparing an interest restriction return [CFM98510](#), PARA 61 provides an analogous power to a UK group company.

This power may be deployed if:

- H. No appointment of a reporting company has effect for a period of account and the time limit for an appointment by the group has expired (6 months after the end of the period of account); or
- I. An appointment of a reporting company has effect, but no interest restriction return has been submitted and the filing date for an interest restriction return has passed (12 months after the end of the period of account or, if later, 3 months after the appointment of the reporting company - PARA7(5)).

To this end, a company that was a UK group company (C) for all or part of the period of account may serve a notice on any other similar company. The notice will require the other company to provide such information as is needed for C to determine whether it is required to leave amounts of tax-interest out of account and, if so, how much. The notice must specify the information that is needed.

This duty to provide information is enforceable by the company that gives the notice requiring the information, and not by HMRC (PARA61(6)).

# **CFM98660 Interest restriction: Administration: UK group company: Items of income to be left out of account**

## **TIOPA10/S377, SCH7A/PARAS 68, 69**

TIOPA10/S377(2) sets out a default order to be applied in identifying classes of tax-interest that are disallowed. S377(3) then provides flexibility by allowing a company to elect out of the default rule.

In the absence of a valid election out, the default rule applies:

- Where amendments arise from an interest restriction return, including a revised return;
- Where no interest restriction is submitted, but interest restriction is due; and
- Where a determination is made by HMRC under SCH7A/PARA56 or 58.

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:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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 as a financial liability - 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.

It should be noted that the approach of disallowing an amount equal to a company's non-trading loan relationships deficit first, followed by trading amounts second, would not be possible in all cases. For example, a company might have a foreign exchange gain, which is not tax-interest income, partly or completely offset by an accrual of loan interest payable, which is a tax-interest expense. In such circumstances, giving effect to a tax-interest restriction might require transforming a loan relationships deficit into a non-trading profit, or increasing a net non-trading loan relationships profit. It follows that it may be necessary to 'dig down' into detail of a company's tax computations to establish the effect of an allocated restriction.

### **Electing out**

The effect of an election under TIOPA10/S377(3) is to disapply the default order and to enable the company to specify which items of tax-interest the company chooses to leave out of account. Such an election is made and administered at company level. This avoids the need for considerable amounts of detail, company by company, in the group's interest restriction return. It also avoids the need to amend that return for a decision that might alter the tax position only of a single company in the group.

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



The election is not simply an election to set aside the default order in S377; it also identifies the particular tax-interest amounts that are left out of 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 debit by debit. 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 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 and 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 to give effect to the election will be performed by the company as a single process.

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

# **CFM98670 Interest restriction: Administration: UK group company: Disallowed tax-interest amounts carried forward**

## **TIOPA10/S378**

Once a tax interest expense had been disallowed, either under TIOPA10/S375, where a compliant interest restriction return has been submitted by a group, or by S376 (where a compliant interest restriction return has not been submitted, but the company has been required to leave tax-interest out of account in its company tax return), it becomes a tax attribute of the company. S378 permits the disallowance to be carried forward to later accounting periods (in which it may possibly be reactivated) subject to certain limitations.

If a tax-interest amount that was left out of account is one that would have been deducted in computing the profits of a trade, it is no longer available for carry-forward if the company ceases to carry on the trade, or if the scale of activities of the trade becomes small or negligible. This is analogous to the restriction on carry-forward of trading losses in similar circumstances after a change in the ownership of a company carrying on a trade - CTA10/673(3), see [CTM06390](#). The disallowed tax-interest amounts are an attribute of a company and would normally be carried forward, notwithstanding a change in ownership of the company.

The same applies if the company's trade becomes one that is not carried on with a view to profit or in exercise of a statutory function (see CTA10/S44(4)).

If a tax-interest amount that was left out of account is one that would have been deducted in computing the profits of an investment business, it is no longer available for carry-forward if the company ceases to carry on the investment business, or if the scale of activities in the investment business becomes small or negligible. The analogy here is with CTA10/S677(4). See [CTM08720](#).

A tax-interest amount ceases to be carried forward further once it is reactivated in a later period, as described in [CFM98680](#).

# **CFM98680 Interest restriction: Administration: UK group company: Reactivation of disallowed tax-interest amounts carried forward**

## **TIOPA10/S379, SCH7A/PARA70(1)**

Reactivation of tax-interest previously left out of account is only permitted where the reporting company for a [worldwide group](#) submits a full interest restriction return. The amounts to be reactivated in respect of a worldwide group [period of account](#) and the amounts allocated to each UK group company accounting period must be set out in a [statement of allocated interest reactivations](#), which forms part of the interest restriction return TIOPA10/SCH7A/PARA25. The rules governing the amounts that may be reactivated for a company accounting period are set out in PARA26.

S379(2) requires the UK group company to which reactivations are allocated for a relevant accounting period - an accounting period contained wholly or partly within the worldwide group period of account) - to bring into account tax-interest amounts allocated to that accounting period. Amounts will be allocated to an earlier accounting period before a later one (this follows from S379(5)(a) and PARA26(4)(a)) and cannot be allocated to an accounting period in which the company was not a member of the group (S370(5)(b), PARA 26(4)(b)).

The company is treated as amending its company tax return in accordance with the allocated activation - PARA 70(1).

The identification of amounts of tax-interest brought back into account is dealt with in S380, see [CFM98690](#).

# **CFM98690 Interest restriction: Administration: UK group 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](#). S380(3) then provides flexibility by allowing a company to elect out of the default rule.

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:

6. 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.
7. 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.
8. 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.
9. 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.
10. 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 as 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.

# **CFM98700 Interest restriction: Administration: UK group company: Set off of disallowances and reactivations**

## **TIOPA10/S381**

In a single [period of account](#) a [worldwide group](#) cannot have both disallowances and reactivations. Either the group's [aggregate net tax-interest expense](#) will exceed the interest allowance (including unused interest allowance from earlier years) resulting in disallowances; or it will not, in which case there will be no disallowance but reactivations may arise if there have been disallowances in earlier periods.

However it is possible that a single accounting period of a UK group company will straddle two periods of accounts of its worldwide group, with disallowances in one period and reactivations in the other. Or the company may change group part way through its accounting period in such a way that it might be allocated both disallowances and reactivations.

In these circumstances, TIOPA10/S381 provides for a netting off of disallowances and exemptions. Only the excess of a "gross disallowed amount" over a "gross reactivated amount" is to be disallowed under S375 or the excess of a gross reactivated amount over a gross disallowed amount is reactivated under S379.

As there can only be reactivations where a [full interest restriction return](#) is submitted, it would be very unusual for disallowances to arise for a period of account for which no interest restriction return is submitted (to which S376, rather than S375 would apply) to be netted off against reactivations from a different period or group, but S381 does provide for this to happen.

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# **CFM98730 Interest restriction: Administration: Enquiry Procedure: Service of a notice of enquiry**

## **TIOPA10/SCH7A/PARA40**

The corporate interest restriction provisions have enquiry provisions based around an enquiry into an interest restriction return. The procedures are based on those in FA98/SCH18, but adapted to fit the context.

An officer of Revenue and Customs may open an enquiry into an interest restriction return submitted by a reporting company by serving a notice of enquiry on the reporting company - TIOPA10/SCH7A/PARA40. Such an enquiry is quite separate from any enquiry into the company tax return of a member of the group, and the opening of such an enquiry does not prevent the opening of an enquiry into the company tax return of a member of the group. For limitations on the scope of an interest restriction return enquiry in respect of matters included in a company tax return, see [CFM98760](#).

An enquiry may be opened into a revised return even if no enquiry was opened into the return it replaces.

Normally, an interest restriction return that has been subject to an enquiry cannot be subject to another. If a revised return is submitted after conclusion of an enquiry, that is a new return and can be the subject of an enquiry, but in this case the scope of the enquiry is restricted to the revisions - PARA43(5). For the effect of the submission of a revised return during the course of an enquiry, see [CFM98780](#).

# **CFM98740 Interest restriction: Administration: Enquiry Procedure: Normal time limits for opening an enquiry**

## **TIOPA10/SCH7A/PARA41**

The time limits for opening an enquiry reflect the long period of time in which a reporting company may submit a [revised interest restriction return](#) - normally 36 months after the end of the period of account - TIOPA10/SCH7A/PARA8(3)(a). During this period, the return could be seen as provisional. Accordingly the "normal" time limit for opening an enquiry is slightly longer, 39 months (PARA41(2)(a)).

It is also possible that the return contains estimated information - PARA27. Tying in with the enquiry deadline, the reporting company must inform HMRC within 30 days if this remains the case 36 months after the end of the period of account.

An enquiry may also be opened later than the 36 month point if this is either:

- Within 6 months of the appointment of a reporting company (this may happen, in particular, if the [HMRC enquiry closure procedures include the appointment a reporting company](#) for a different group or
- Before 31 January, 30 April, 31 July or 31 October following the submission of a revised interest restriction return (this is analogous to the limit in FA98/SCH18/PARA24(4)).

# **CFM98750 Interest restriction: Administration: Enquiry Procedure: Extended time limits where there is a discovery**

## **TIOPA10/SCH7A/PARA 42**

The extended time limits for opening an interest restriction enquiry are analogous to the "discovery assessment" provisions in FA98/SCH18/PARA41. As the interest restriction provisions work primarily at group level, this approach is less cumbersome than procedures requiring assessments to be made on all UK group members. The taxpayer safeguards reflect those in the FA98/SCH18 provisions.

PARA42(1) permits either the opening of a new enquiry or the reopening of a closed enquiry.

This rule can apply where an officer of HMRC has reasonable grounds for considering that an interest restriction return is incorrect (by not complying with the requirements of PARA20(3) see [CFM98430](#)), that this would lead to an increase in tax payable by a company, and either a closure notice had been issued in respect of a previous enquiry, or the normal time limit for opening an enquiry has passed.

This is subject to the restriction that, at the time the closure notice was issued, or the normal time limit expired, the officer of HMRC could not have been expected to be aware of the way in which the return was incorrect by reference to the relevant information available to him at the time. This restriction parallels that in FA98/SCH18/PARA44(1) in respect of a company tax return enquiry discovery assessment.

The "relevant information" is:

- information contained in the interest restriction return, or the two returns immediately preceding the group's period of account;
- documents, etc. provided in respect of a previous enquiry into the interest restriction return or the two previous returns;
- information the existence and relevance of which could be inferred from the information above or was notified by the reporting company or a person acting on its behalf.

Again, this broadly parallels FA98/SCH18/PARA44.

The extended time limits, in terms of time after the end of the period of account, are:

- 20 years in a case of deliberate non-compliance by the reporting company or a person acting on its behalf.
- 6 years in a case of careless non-compliance; and
- 4 years otherwise.

# **CFM98760 Interest restriction: Administration: Enquiry Procedure: Scope of enquiry and interaction with a CT return enquiry**

## **TIOPA10/SCH7A/PARA43**

There are a number of restrictions on the scope of an enquiry

### **Limits if there has already been an enquiry**

Once an enquiry into a return has been closed, it can only be reopened under the "discovery" provisions of TIOPA10/SCH7A/PARA42, see [CFM98750](#).

If an enquiry has been closed, but a revised interest restriction return is subsequently submitted for the same [worldwide group](#) period of account, then the scope of an enquiry into a revised return (in the absence of a discovery) is restricted to the new information contained in the revised return - PARA43(5).

### **Limits by reference to amounts included in a company tax return**

An interest restriction enquiry may not include an enquiry into an item that is contained in or should be contained in a company tax return - PARA39(2). If, for example, HMRC consider that the amount included in a company's tax interest debits in respect of finance leasing expense is incorrectly computed, that should be the subject of an enquiry into the company's tax return. It is not within the scope of an interest restriction enquiry.

However, if the amount is correctly stated in the company tax return but the officer considers its treatment in an interest restriction return is incorrect (for instance, if it has not been treated as a tax-interest amount falling within condition C in TIOPA 2010/s382(4) - see [CFM95610](#)), that does fall within the scope of an interest restriction enquiry by virtue of PARA43(3).

Equally, it would be in scope to enquire into whether amounts were correctly excluded in computing tax-interest or tax-EBITDA, for instance in respect of loan relationships (S383(3) and S386(3)) [CFM95630](#), derivative contracts S384(3) and 387(3) [CFM95650](#) or intangible fixed assets S408 [CFM95805](#).

### **No interference with company tax return enquiries**

Whilst the interest restriction enquiry does not extend to items included in a company tax return, it does not limit the operation of a FA98/SCH18/PT4 enquiry into a company tax return TIOPA10/SCH7A/PARA43(4). An enquiry

into a company tax return of a UK group company may be opened, continued and closed irrespective of any interest restriction return enquiry that might impact a company accounting period under enquiry. After a company tax enquiry is concluded, its tax position for the accounting period may still be amended in consequence of the interest restriction return closure procedures, see [CFM98790](#).

### **Enquiry into the composition of a group and its period of account.**

PARA44 allows an interest restriction enquiry to deal with the question of whether the group's accounting period has been correctly identified. In practice, this is most likely to arise if the ultimate parent of a group has been incorrectly identified, and has a different period of account from the company identified as the ultimate parent in an interest restriction return.

The enquiry can also extend to the composition of a group or groups; in particular whether a group consists of one or more different groups, or includes entities that should have been members of a different group, or excludes entities that should have been members of a group. The closure procedures address the additional steps that may need to be taken if an officer of Revenue and Customs concludes that an interest restriction return is incorrect in this respect, see [CFM98830](#) and [CFM98840](#).

# **CFM98770 Interest restriction: Administration: Enquiry Procedure: Notice requiring SA amendment to prevent loss of tax during enquiry**

## **TIOPA10/SCH7A/PARA45**

It is possible that an HMRC officer may conclude that there may be a loss of tax to the Crown where a company tax return understates a company's tax liability in respect of a matter under enquiry in an interest restriction enquiry, unless the relevant company tax return is immediately amended.

TIOPA10/SCH7A/PARA45 allows the officer to serve a notice in the company to require it to amend its self-assessment. This is analogous to the power under FA98/SCH18/PARA30 (often referred to as the "jeopardy assessment" procedures) in relation to company tax return enquiries.

The notice may be appealed, within 30 days. As in the case of a company tax enquiry, the HMRC review procedure in TMA70/S49A(2) may not be invoked in the event of such a notice.



# **CFM98780 Interest restriction: Administration: Enquiry Procedure: Revision of a return during an enquiry**

## **TIOPA10/SCH7A/PARA46**

TIOPA10/SCH7A/PARA46 follows the lines of FA98/SCH18/PARA31 and regulates what happens if a reporting company submits an amended return during the course of an enquiry.

The revisions made may be taken into account in the enquiry and do not restrict its scope.

The effects of the revision are deferred. They do not affect the tax payable by a company until the enquiry is completed, although this does not prevent a claim for repayment being made in advance of liability being established (TMA70/S59DA). On closure of the enquiry, the closure notice may disregard the revisions, accept them, or require them to be made along with other actions.

# **CFM98790 Interest restriction: Administration: Enquiry Procedure: Closure notice, correct group and period of account**

## **TIOPA10/SCH7A/PARAS 47, 49**

The interest restriction return enquiry closure procedures are more complex than those for a company tax return enquiry. There are two reasons for this. First, the interest restriction return does not of itself determine tax liabilities. Any changes must flow through to the level of individual companies before the final outcome is determined. Second, there is a wider variety of possible outcomes, because it may be that HMRC concludes that the [worldwide group](#) has been incorrectly identified, and that returns or [revised interest restriction returns](#) will be required for more than one group.

This section of the guidance deals with the simple case where the group and its [period of account](#) were correctly identified in the return under enquiry. Guidance on more complex scenarios is found at [CFM98810](#) and [CFM98820](#).

When the officer of Revenue and Customs considers that the enquiry is completed, he issues a {closure notice}, which informs the reporting company that the enquiry is completed. This will either state that no steps are required to be taken, or will set out the steps the reporting company is required to make (PARA49(2)). The steps that the reporting company is expected to take will normally include submitting one (or more) interest restriction returns.

The closure notice may simply state revised group level numbers, or may also set out how the amounts should be allocated to group members (PARA49(3)).

Closure notices and steps required in more complex scenarios are dealt with at [CFM98820](#) et seq.

# **CFM98800 Interest restriction: Administration: Enquiry Procedure: Requirement of a reporting company to submit a revised return**

## **TIOPA10/SCH7A/PARA50**

Where a closure notice so directs, the reporting company is required to submit one (or more) interest restriction returns, which give effect to the changes required by the closure notice (TIOPA10/SCH7A/PARA50(1)). It must also make any consequential amendments.

Such a return must indicate the ways in which it differs from any previous return, and supersedes any such return.

The time limit for submitting the revised return is 3 months from the date of the closure notice. This time limit overrides the normal time limits in PARAS 7(6) and 8(3) - see [CFM98520](#) and [CFM98530](#).

Where the reporting company fails to submit a return within the time limit, an officer of Revenue and Customs may make a determination under PARA58, see [CFM98870](#).

The provisions of PARA50 as regards amendments to interest restriction returns are equally applicable to the more complex scenarios described at [CFM98820](#) to [CFM98840](#), to the extent that the closure notice requires returns to be submitted.

# **CFM98810 Interest restriction: Administration: Enquiry Procedure: Closure notices when return submitted for incorrect period of account**

## **TIOPA10/SCH7A/PARAS47, 49**

It is possible that an interest restriction return is submitted for an incorrect [period of account](#). Whilst it would be unusual for the period of account of a company to be unclear, it may be that the [ultimate parent](#) is incorrectly identified in the return, for example in private equity or privately-owned groups. Shareholding structures can be complex, and it may be that the actual ultimate parent is higher or lower in the ownership chain than originally thought and has a different period of account from the company originally considered to be the ultimate parent. As the ultimate parent will often not be UK tax resident, the UK group companies in the group may nonetheless be correctly stated in the interest restriction return.

Where an officer of Revenue and Customs considers that the period of account was incorrectly stated, he must identify the correct period or periods of account in the closure notice, stating both the beginning and the end of the identified periods - PARAS 47(3), (7); 49(4). The reporting company should be required to amend the return to ensure it is for an appropriate period, and to make further returns as required. The requirements of PARA50 apply to these returns, see [CFM98800](#).

# **CFM98820 Interest restriction: Administration: Enquiry Procedure: Closure notices when group was identified incorrectly**

## **TIOPA10/SCH7A/PARA49**

The position is more complicated if the conclusions of an enquiry include a finding that the composition of the [worldwide group](#), as regards UK group companies that are not dormant was incorrectly stated in the [interest restriction return](#). This is particularly the case if it is concluded that what was treated as a group actually comprised more than one group, or was part of a larger group.

In those cases, it may be that the existing reporting company is unable to perform all the necessary actions, and that either another reporting company must be appointed, or the reporting company for another group needs to be involved in the process. A further possible consequence of a misidentified group is that the return was prepared for an incorrect [period of account](#).

This section of guidance deals with the scenarios where the existing reporting company is [able](#) to undertake all of the actions required by a closure notice.

There are in essence two circumstances where this is the case, where either condition A or condition B in TIOPA10/SCH7A/PARA49(7) and (8) applies.

As a preliminary issue, it is necessary to determine the relevant periods of account. This may simply be a matter of substituting a different period of account for the period for which the return is submitted, or it may be that more than one corrected period of account overlaps the period for which the return was submitted, or there may be one or more different periods - see [CFM98810](#). The officer of Revenue and Customs must identify and deal with each period in the closure notice.

The company subject to the closure notice is the reporting company that submitted the interest restriction return under enquiry. It must be a member of the "relevant group", that is, the group for which an interest restriction return should have been submitted for the period of account in question.

Condition A relates to a smaller worldwide group. It is that all of the members of the "relevant group" were members of the group for which a return was submitted.

Condition B relates to a larger group, but one without an existing reporting company. It is that (a) the relevant group includes UK group companies that were not members of the group for which the return was made and (b) the ultimate parent of that group is not the ultimate parent of a group which has already submitted an interest restriction return, for the designated period of account. The designated period of account is the period for which an interest return should have been made (which may well be the period for which the return under enquiry was actually made).

In neither case is there any impediment to the existing reporting company doing all that is necessary.

If the period of account is correctly identified, the closure notice will then direct the reporting company to submit a revised return for the period of account.

If the period of account in the original return was incorrect, the reporting company must be required by the closure notice to submit returns for each correct period of account, even if the composition of each relevant group is not the same in each period. The company is treated as having been appointed as reporting company for each of those groups - PARA49(10). Paras 49(12) and 50(2) require the returns to be submitted within 3 months of the issue of the closure notice, overriding any time limit that might otherwise apply.

The requirements of PARA50 apply to these returns, see [CFM98800](#).

Where the reporting company fails to submit a return within the time limit, an officer of Revenue and Customs may make a determination under PARA58, see [CFM98870](#).

# **CFM98830 Interest restriction: Administration: Enquiry Procedure: Closure notices when incorrect group and correct group has a reporting company**

## **TIOPA10/SCH7A/PARA51**

TIOPA10/SCH7A/PARA51 deals with a scenario similar to that envisaged in condition B in PARA49(8) (see [CFM98820](#)) but where some or all of the companies in the group for which the return was submitted are considered by HMRC to be members of a different [worldwide group](#) that has appointed a reporting company. A determination under PARA51 by an officer of Revenue and Customs appoints that company as reporting company for the corrected group.

The legislation makes reference to the "original group", the "existing group" and the "new group". The original group is the group that was considered to exist in the "interest restriction return" that is under enquiry. The new group is the group that HMRC considers to exist in a relevant period account. This group will include some or all of the companies in the existing group. The existing group is a group that has appointed a reporting company (whether or not it has actually submitted an interest restriction return).

The circumstances set out in PARA51 are:

- J. An enquiry has been made into the "original return" submitted by the reporting company of the "original group".
- K. An officer of Revenue and Customs issues a closure notice in which it identifies a period of account for a "new group", for which an interest restriction return should have been submitted.
- L. The new group contains both companies that were members of the original group (this could be some or all of its members) and other UK group companies. The reference to other group companies has the effect that PARA51 does not come into play when a misidentification of the group only concerns companies not in the UK tax net. Dormant companies are also ignored (PARA47(8)).
- M. The [ultimate parent](#) of the "new group" is also the ultimate parent of another group that has appointed a reporting company - the "existing group".

In this scenario, an officer of HMRC must, within 30 days, appoint the reporting company of the existing group as the reporting company of the new group. Any interest restriction return that was submitted for the existing group that ends or begins in the new group's period of account is treated as withdrawn, as is any notice of enquiry, closure notice or appeal relating to that return. If the closure notice has had the effect of changing the periods of account, the reporting company for the existing group is also appointed as reporting company for the new group, for a period ending just before the starting date of the period of account of the new group.

PARA51 can apply where some of the members of the original group, but not including its reporting company, are members of the new group. In that case, the original reporting company will be required to submit a revised return or returns for the revised original group under PARA49(6) - as in [CFM 98820]. This is in addition to actions that must be taken by the reporting company of the new group.

PARA51 can also apply where all of the members of the two groups are considered to be members of the new group, such that two (or more) groups that filed interest restriction returns as two separate worldwide groups should instead have filed a return as a single group - the new group. It is possible, for instance, that two groups were under enquiry, and transpired to constitute one group, so that each group could be seen as either the original group or the existing group. In such a scenario, an officer of HMRC must select which is to be the reporting company for the new group.

It is also possible that some of the members of the original group, including its reporting company, are members of the new group, but others are not, and are left stranded, without a reporting company. This is another scenario in which an officer of HMRC can appoint a reporting company, under PARA53 see [CFM98840](#) for a group that consists of, or includes, those companies.

In a scenario where PARA51 applies, to the extent that the existing reporting company is also required to submit returns (in addition to the appointment of a different reporting company), the requirements of PARA50 apply to these returns, see [CFM98800](#).



# **CFM98840 Interest restriction: Administration: Enquiry Procedure: Closure notices when incorrect group and correct group has no reporting company**

## **TIOPA10/SCH7A/PARA53**

TIOPA10/SCH7A/PARA53 deals with the scenario where an officer of Revenue and Customs concludes that one or more of the members of a group for which an interest restriction return was submitted were not members of the group of which the reporting company is a member and also are not members of a different group, which has appointed a reporting company.

The circumstances needed for PARA53 to apply are:

- N. A closure notice is issued to the reporting company that has submitted the return under enquiry.
- O. The closure notice designates a period of account of a different group, the "new group"
- P. The reporting company is not a member of the new group at any time in the designated period and

PARA51 [CFM98830](#) does not apply.

This fourth condition should be read as meaning that PARA51 does not apply to the new group. In other words, unlike where PARA51 applies, the new group in question is not one for which a reporting company has been appointed.

When PARA53 applies, the officer of HMRC may appoint an eligible company (non-dormant company that was a UK group company for at least part of the period) as reporting company for the new group, and has three months to do so.

Once appointed, the reporting company for the new group will have three months to submit an interest restriction return -PARA7(5)(b) and the return will be valid if received within that time - PARA7(6)(b).

It is possible that in complex scenarios there could be a new group to which PARA51 applies, and also one or more new groups to which PARA53 applies.

In a scenario where PARA53 applies, to the extent that the existing reporting company is also required to submit returns (in addition to the appointment of a different reporting company), the requirements of PARA50 apply to these returns.

# **CFM98850 Interest restriction: Administration: Enquiry Procedure: Direction to complete an enquiry**

## **TIOPA10/SCH7A/PARA48**

TIOPA10/SCH7A/PARA48 allows a reporting company to apply to the tribunal, at any time, for a direction that an officer of Revenue and Customs should give a closure notice in respect of an enquiry, within a specified period. This is equivalent to an application under FA98/SCH18/PARA33 in relation to a company tax return enquiry.

As in the case of the corresponding company tax return enquiry provision, an appeal is subject to the normal provisions of TMA70/PART5 as they apply to appeals, with the exclusions set out in TMA70/S49(2)(b).

The tribunal must give the direction, unless satisfied that the officer has reasonable grounds for not giving a closure notice.

# **CFM98860 Interest restriction: Administration: Enquiry Procedure: Appeals against closure and PARA51 notices**

## **TIOPA10/SCH7A/PARA52**

A reporting company for an interest restriction return under enquiry may appeal against a statement within the closure notice that sets out the steps that the reporting company must take. The closure notice mechanics and possible steps are described at [CFM98790](#) to [CFM98840](#). An appeal may also be made by the reporting company of the new group against a direction under TIOPA10/SCH7A/PARA51, see [CFM98830](#).

The appeal should be made within 30 days to the officer of Revenue and Customs who issued the notice.

For guidance on appeals generally, see [ARTG2410](#) et seq.

# **CFM98870 Interest restriction: Administration: Enquiry Procedure: Determinations following an enquiry and resulting revisions**

## **TIOPA10/SCH7A/PARAS58, 59**

Where a reporting company does not appeal a closure notice, the normal procedure would be for it complete a two-step process by filing one or more revised or new returns that comply with the requirements of the notice - TIOPA10/SCH7A/PARA50, [CFM98800](#). In such a revised return, it has the opportunity to make discretionary allocations of disallowances to consenting companies - see [CFM98580](#). The two-step process should allow an efficient means of settling the enquiry, allowing the reporting company to make discretionary allocations, and avoiding the need for HMRC to compute and notify pro-rata amounts.

If the reporting company fails to submit a return within the 3 months allowed by PARA50(2), an officer may make a determination under paragraph 58. A determination is made on each UK group company subject to interest restrictions. The officer is required to determine, to the best of his information and belief, pro-rata amounts of the [total disallowed amount](#) to allocate to companies and their accounting periods. Where a company is apportioned an amount (other than nil), it must leave that amount of its deduction for tax-interest out of account. For the calculation of pro-rata amounts by company and accounting period, see [CFM98590](#) and [CFM98600](#).

A determination may also be made under PARA58 where a return is submitted within the three month period specified in PARA 50(2), but the officer considers that the return does not comply with the requirements of the closure notice.

The officer must send notice of the determination to both the company and the group's reporting company, and must make any determination within 3 months of the end of the "return period", which is the 3 months after the issue of the closure notice allowed by PARA50(2).

Where a group has not submitted an interest restriction return an officer may make a determination under PARA56 with the intention of prompting the group to make a return, see [CFM98560](#). In that case a return made within 12 months has effect (PARA57). But, where an officer makes a determination under PARA58, this is intended to achieve finality, where a group has neither

appealed a closure notice nor taken the steps required by the closure notice - PARA49(2)(b). Accordingly there is no further opportunity to submit returns.

PARA59 permits an appeal to be made against a PARA 58 determination within 30 days, but the scope of such an appeal is restricted to the question of whether the determination complies with the closure notice.

Where a notice of determination is given under PARA58 a company is treated as having amended its return in accordance with the determination - PARA 70(2).

It is possible that a determination might be made under PARA56 following the closure of an enquiry, but this would be the case only where a reporting company is appointed under PARA 51 or 53. This reporting company will then have 3 months to submit a return PARA7(5)(b) (or exceptionally until 12 months after the period of account were this later). The determination would then be part of the process applicable in the absence of a return, or one that meets the requirements of PARA20, see [CFM98430](#).

# **CFM98880 Interest restriction: Administration: Enquiry Procedure: Consequential claims to company tax returns following enquiry**

## **TIOPA10/SCH7A/PARA72**

TIOPA10/SCH7A/PARA72 permits certain claims to be made where a company amends, or is treated as amending, its tax return in consequence of the issue of an interest restriction return enquiry closure notice or a determination and, as a result, the corporation tax payable is increased. A claim is a qualifying claim if it reduces that tax, irrespective of any effects on tax for other periods, unless it has the effect of altering the tax position of another person, or if it has the effect of reducing the company's tax liability below the amount that would have been payable, in the absence of the closure notice or determination.

Such claims can be made up to 12 months after the company's receipt of a copy of the closure notice or determination. Previous claims that are not irrevocable may be revoked or varied.

Adjustments to the tax payable may be made by discharge or repayments of tax, or the making of assessments or amendments, or otherwise. To the extent necessary, the provisions of TMA70 relating to appeals against decisions on claims are applicable, see [ARTG2400](#) et seq.

# **CFM98890 Interest restriction: Administration: Record retention and information powers: Contents**

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[CFM98950 Interest restriction: Administration: Record retention and information powers: Meaning of "checking an interest restriction return"](#)

[CFM98960 Interest restriction: Administration: Record retention and information powers: Appeals against information notices](#)

[CFM98970 Interest restriction: Administration: Record retention and information powers: General and interest restriction information powers](#)



## **CFM98900 Interest restriction: Administration: Record retention and information powers: Duty to keep and preserve records**

### **TIOPA10/SCH7A/PARAS 38, 39**

The duty to keep and preserve records in TIOPA10/SCH7A/PT 3 is similar to the corresponding company tax return requirements at FA98/SCH18/PARA21 to 23. The fundamental requirement in TIOPA10 SCH7A/PARA38 is for a reporting company to keep such records as are needed for it to be able to submit a complete and correct return for a period of account.

Normally records must be kept until 6 years after the period, although HMRC may specify a shorter period for some or all records. Where the company is required to submit a return, it is required to keep records until such time (if later) as any enquiry is complete or a normal time limits enquiry cannot be opened. The information may be preserved in any form – subject to any conditions or exceptions specified in writing by HMRC (PARA38(6)).

The Commissioners of Revenue and Customs may make regulations specifying which records do, or do not, need to be kept and preserved – PARA38(7).

Penalties for failure to keep and preserve records are dealt with under PARA39, see [CFM99100](#).

## **CFM98910 Interest restriction: Administration: Record retention and information powers: Introduction**

FA08/SCH36 contains comprehensive information powers, but some of those provisions deal with matters not relevant to checking an interest restriction return. Accordingly, TIOPA10/SCH7A/PT7 contains specific powers which cross-reference certain provisions of the more general powers. These powers are in addition to those in PT6 which are exercisable by the reporting company see [CFM98510](#), or members of a [worldwide group](#), see [CFM98657](#).

# **CFM98920 Interest restriction: Administration: Record retention and information powers: Powers relating to members of worldwide group**

## **TIOPA10/SCH7A/PARA62**

Applying TIOPA10/SCH7A/PARA62, an officer of Revenue and Customs may serve a notice on a company that was a UK group company and a member of a [worldwide group](#) at any time during a period of account to provide information or produce a document reasonably required for checking an interest restriction return- see [CFM98940](#). The recipient needs to be within the charge to UK corporation tax or income tax. For this purpose a member of the worldwide group includes a company that the officer considers to be, or may be, a member of that group. The notice may specify how the officer wishes the information or document to be provided or produced.

The information in question may relate to one or more other group companies, subject to the restrictions on powers in FA08/SCH36/PT4 - see [CFM98950](#). For instance, a reporting company might be required to provide information or documents that relate to a number of members of the group.

For the purposes of such a notice, another member of the group is not a third party, so the position is different from a "group of undertakings" information notice to which FA08/SCH36/PARA35 applies, which is a form of third party notice under FA08/SCH36/PARA2.

For the right to appeal see [CFM98960](#).

# **CFM98930 Interest restriction: Administration: Record retention and information powers: Third party information powers**

## **TIOPA10/SCH7A/PARA63**

Applying TIOPA10/SCH7A/PARA63, an officer of Revenue and Customs may serve a notice on a third party to provide information or a document reasonably required for checking an interest restriction return. In this context a third party is a person that is not a group member at any time in the [period of account](#).

The giving of such a notice must be approved, either by a UK group company that is a member of the group at any time in the period of account (in practice this would most likely be the reporting company), or by a tribunal to whom the officer has applied.

The tribunal can only approve the notice if it is satisfied that the officer is justified in doing so. Further, unless the tribunal is satisfied that the requirements of PARA63(5) should be dispensed with, because of possible prejudice to the assessment or collection of tax, those requirements must be met.

The requirements of that subparagraph (which are similar to provisions in FA08/SCH36/PARA3) are:

- The third party has been informed of the need for the information and documents
- The third party has had reasonable time to make representations to HMRC
- The tribunal has been given a summary of any representations made by the third party and
- A company that was a UK group company in the period of account (in practice this would normally be the reporting company) has been given a summary of the reasons why the information and documents are required

This last requirement does not apply if an officer of Revenue and Customs has insufficient information to identify such a company.

HMRC is not required to give the third party notice of the application to the tribunal for approval, but the third party will clearly be aware of this, except in cases of possible prejudice to the assessment or collection of tax. The third party must be given details of the worldwide group, except where the tribunal is satisfied that this could prejudice the assessment or collection of tax. Similarly, in the absence of such possible prejudice, and where an officer of Revenue and Customs has sufficient information to identify such a company, he must provide a UK group company with a copy of the third party information notice.

A decision of the tribunal under TIOPA10/SCH7A/PARA57 is final, notwithstanding sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, as in the case of a third party notice under FA 2008 Sch. 36 (see paragraph 6(3) thereof).

For the right to appeal see [CFM98960](#).

# **CFM98940 Interest restriction: Administration: Record retention and information powers: Limitation of powers when enquiry is currently opened into a filed return**

## **TIOPA10/SCH7A/PARA64**

The general rule is that once HMRC has received an interest restriction return for a period of account, an officer may not serve a notice under TIOPA10/SCH7A/PARAS 62 or 63. However, this does not apply where an enquiry notice has been served (see [CFM98730](#)) and the enquiry has not been closed - per paragraph 58. In practice, these are the circumstances in which it is most likely that HMRC could invoke these information powers. This follows the pattern of FA08/SCH36/PARA21(2) to (8), as regards a company tax return.

# **CFM98950 Interest restriction: Administration: Record retention and information powers: Meaning of "checking an interest restriction return"**

## **TIOPA10/SCH7A/PARA67**

Checking an interest restriction includes:

- Determining whether or not an interest return should be submitted for a [period of account](#) of a [worldwide group](#)
- Determining whether interest restrictions are due, and quantifying them
- Determining the membership of a group, including which entities are UK group companies
- Determining any other question relative to the operation of TIOPA 2010/Part 10 in relation to a return or anything that should have been included in a return.

This restricts the matters to those connected with the interest restriction legislation. By way of contrast, the scope of FA 2008/Sch. 36 is wider, encompassing checking the taxpayer's tax position - para. 1(1) thereof.

# **CFM98960 Interest restriction: Administration: Record retention and information powers: Appeals against information notices**

## **TIOPA10/SCH7A/PARA65**

TIOPA10/SCH7A/PARA 65 deals with appeals against information notices.

A group member can appeal against an information notice under PARA62.

A third party can appeal against an information notice under PARA63, but only where the giving of the notice has not been approved by the tribunal. This can be the case where a UK group company has approved giving a notice - see [CFM98920](#)). The only grounds for appeal are that the notice is too onerous to comply with.

No appeal may be made against a requirement to provide information in respect of a UK group company's statutory records as defined in FA08/SCH36/PARA62. This parallels the position under PARAS 29 and 30 of that Schedule.

For general guidance on appeals procedures see [ARTG2400](#) et seq.



# **CFM98970 Interest restriction: Administration: Record retention and information powers: General information powers and interest restriction information powers**

## **TIOPA10/SCH7A/PARA66**

TIOPA10/SCH7A/PARA66 brings into play various provisions of FA08/SCH36, in relation to notices under the interest restriction information power. These are outlined, in brief below.

### **Time limits, copies etc.**

FA08/SCH36/PARA7 deals with time limits for producing information and documents and where this must be produced. Paragraph 8 allows copies of documents to be provided in the absence of a specific requirement for an original. PARA15 permits an officer of Revenue and Customs to make copies. PARA16 allows an officer to remove a document and retain it for a reasonable period of time and imposes certain obligations on the officer

FA08/SCH36/PART4 deals with restrictions on information powers. PARA18 provides for a fundamental protection in respect of information notices: a notice can only require a person to produce a document if it is in that person's possession or power.

### **Restrictions on information powers**

FA08/SCH36/PARA19 deals with types of documents that a notice cannot require to be produced, with exceptions. In particular, a person cannot be required to produce materials relating to the conduct of a pending appeal. Also personal records (as defined in the Police and Criminal Evidence Act 1984/S12), unless sufficiently redacted so as to no longer be a personal record.

FA08/SCH36/PARA 20 limits the right to documents originating more than 6 years before a notice.

FA08/SCH36/PARA 23 relates to privileged communications between professional legal advisers and clients; a notice cannot require the production of documents in relation to which privilege could be maintained in legal proceedings.

FA08/SCH36/PARA 24 protects information held in connection with an auditor's duties. PARA25 relates to tax advisers' documents, and protects relevant communications and documents relating giving tax advice, where these are the adviser's property, and relate to communications with the taxpayer or another adviser. In neither case does this protection extend to advice or information held in connection with the provision of information or documents by the taxpayer to HMRC - PARA26. It is possible for a document to be protected by PARAS24 or 25 in part only - PARA27.

### **Penalties and offences**

FA08/SCH36/PART7 contains detailed penalty provisions for the general information powers, see [CFM99110](#). PT8 deals with offences; there are criminal sanctions for concealing documents following an informal notice or informal notification.

For further guidance on the general information powers in FA08/SCH36 see [CH20100](#) et seq.

# **CFM98980 Interest restriction: Administration: Penalties: Contents**

[CFM98990 Interest restriction: Administration: Penalties: Introduction](#)

[CFM99000 Interest restriction: Administration: Penalties: Penalties for failure to deliver an interest restriction return](#)

[CFM99010 Interest restriction: Administration: Penalties: Penalty for failure to notify that a return contains estimates after 36 months](#)

[CFM99020 Interest restriction: Administration: Penalties: Introduction to penalties for incorrect return](#)

[CFM99030 Interest restriction: Administration: Penalties: The three levels of inaccuracy and penalty for an incorrect return](#)

[CFM99040 Interest restriction: Administration: Penalties: Notional tax on the return](#)

[CFM99050 Interest restriction: Administration: Penalties: Factors which may reduce the level of penalty on an incorrect return](#)

[CFM99054 Interest restriction: Administration: Penalties: Reductions in penalty levels for special circumstances - general](#)

[CFM99057 Interest restriction: Administration: Penalties: Special reduction where notional tax exceeds actual loss of tax](#)

[CFM99060 Interest restriction: Administration: Penalties: Inaccuracy attributable to company other than reporting company](#)

[CFM99070 Interest restriction: Administration: Penalties: Assessment payment and enforcement of penalty](#)

[CFM99080 Interest restriction: Administration: Penalties: Appeals against penalties for an incorrect return](#)

[CFM99090 Interest restriction: Administration: Penalties: Payments between group companies in respect of penalties](#)

[CFM99100 Interest restriction: Administration: Penalties: Penalties for failure to keep and preserve records](#)

[CFM99110 Interest restriction: Administration: Penalties: Penalties for failure to comply with information notices](#)

## **CFM98990 Interest restriction: Administration: Penalties: Introduction**

The interest restriction provisions have their own penalty provisions, tailored to a regime that works primarily at the level of the worldwide group. Many of the general penalty provisions in FA07/SCH24 do not fit with a group level regime, or are unnecessary as they do not relate to matters involved with the interest restriction rules.

There are circumstances in which a company is required to amend its company tax return to take account of allocated tax-interest restrictions or reactivations or of the effects of elections it has made. The company becomes liable to a penalty of £500 if it fails to amend its return within the time limit. The penalty is administered in the same way as a penalty for [failure to deliver an interest restriction return](#). For the circumstances in which such a company level penalty can arise, see [CFM98630+](#).

# **CFM99000 Interest restriction: Administration: Penalties: Penalties for failure to deliver an interest restriction return**

## **TIOPA10/SCH7A/PARA29.**

A reporting company becomes liable to a penalty under TIOPA10/SCH7A/PARA29 if it fails to deliver a return by the filing date, as required by PARA7. That filing date is 12 months after the end of the [worldwide group's](#) period of account or, if later, 3 months after the appointment of the reporting company, see [CFM98520](#). The penalty is £500 if the return is delivered within 3 months after that filing date, or £1,000 if it is not.

The penalty is levied by an assessment by an officer of Revenue and Customs, notified to the company, within 12 months of the filing date. It is payable within 30 days.

The company has 30 days within which it may give notice of appeal against the penalty.

## **CFM99010 Interest restriction: Administration: Penalties: Penalty for failure to notify that a return contains estimates after 36 months**

### **TIOPA10/SCH7A/PARA27(5)**

Under TIOPA10/SCH7A/PARA 27, an interest restriction must identify any estimated information. If a return still contains estimated information 36 months after the end of the [period of account](#) to which the return relates, the reporting company must notify HMRC to this effect within 30 days, see [CFM98540](#).

If the reporting company fails to do so, it is liable to a penalty of £500.

# CFM99020 Interest restriction: Administration: Penalties: Introduction to penalties for incorrect return

## TIOPA10/SCH7A/PARA30

TIOPA10/SCH7A/PARA30 may impose a penalty in respect of an incorrect or uncorrected return.

This can arise where a (reporting) company, or a person acting on its behalf, submits an incorrect interest restriction return for a [worldwide group](#) for a [period of account](#), and one of the following conditions applies:

- Q. the [total disallowed amount](#) S373 for the worldwide group is understated (including a case where it is incorrectly stated as zero); or
- R. the [interest reactivation cap](#), S373 for the worldwide group is overstated.

The penalty is the "appropriate part", or percentage, of the "notional tax", depending on the level of inaccuracy, see [CFM99030](#). The percentage can range from 30% to 100% depending on the level of inaccuracy, but these percentages can be reduced for disclosure, or in special circumstances, which includes cases where basing the computation of the notional tax might give rise to an unfair result (see PARA33).

If the error is that of the company's agent, and the company took reasonable care to avoid the inaccuracy, no penalty is due.

# CFM99030 Interest restriction: Administration: Penalties: The three levels of inaccuracy and penalty for an incorrect return

## TIOPA10/SCH7A/PARA30(5)

The lowest level of inaccuracy is careless inaccuracy. In this case the penalty, as a percentage of notional tax, is 30%, before any reduction under PARA33.

This rises to 70% for a deliberate inaccuracy that is not concealed, and 100% for deliberate inaccuracy that is concealed.

The inaccuracy is concealed if the company makes arrangements to conceal it, for instance by submitting false information to support an inaccurate figure - para. 27(1).

Should there be an inaccuracy in a return that was not a careless or deliberate inaccuracy at the time the return was submitted, this will be taken to be a careless inaccuracy if the company or person acting on its behalf discovers the inaccuracy, but fails to take reasonable steps to inform an officer of Revenue and Customs of it - PARA31(2).

Guidance is given on what is careless inaccuracy, in the context of the main penalty provisions in FA 2007/Sch. 24 at [CH81140](#). In law, "careless" is viewed as a failure to take reasonable care. Reasonable care can be defined as the behaviour which is that of a prudent and reasonable person in the position of the person in question. For instance, in the FTT decision in HMRC v David Collis where Judge Berner said:

*“That penalty applies if the inaccuracy in the relevant document is due to a failure on the part of the taxpayer (or other person giving the document) to take reasonable care. We consider that the standard by which this falls to be judged is that of a prudent and reasonable taxpayer in the position of the taxpayer in question.”*

A reporting company will not be aware of a careless inaccuracy at the time a return is submitted - if it was so aware, this would constitute deliberate inaccuracy. A careless inaccuracy could arise, for instance, from the failure to have adequate systems and controls in place. Note, however that inclusion of [estimated information](#) in a return is permitted and therefore would not be careless inaccuracy so long as identified, as required by PARA27(2).



An inaccuracy that results from a reasonable interpretation of a provision of the legislation, or a careful application of the legislation to a factual scenario should not normally result in a penalty - see [CH84540](#) for guidance on what constitutes reasonable care, in this context. However, taxpayers should not rely on an interpretation of the legislation being regarded as reasonable if that interpretation makes the legislation incapable of achieving its objective.

### **An example, whether or not careless inaccuracy**

From time to time scenarios will arise where it may be difficult to decide how the legislation should be applied.

By way of example, the definition of a group is based on IFRS accounting. It may not always be clear how a matter might be dealt with under IFRS where, say, US GAAP is applied in a group's consolidated accounts.

For instance, a substantial private equity group holding company may hold the shares in a number of sub-holding companies for groups. It may be unclear whether the holding company would be regarded as an investment entity under IFRS 10-28, and whether the interests in the sub-holding company should be regarded as investments held at fair value and, therefore, not line by line consolidated (see [CFM95350](#)). If the holding company is not an investment entity, it will be the ultimate parent of a worldwide group containing all the sub-holding companies and their subsidiaries. But, if it is an investment entity, and the sub-holding companies and their subsidiaries are not line by line consolidated, each sub-holding company will be the ultimate parent of a smaller worldwide group.

It is possible that there would be no disallowance on the basis of a single large group, but an enquiry into a return leads to the conclusion that there are a number of groups. The original reporting company is a member of a smaller group to which Condition B in TIOPA10/SCH7A/PARA45(7) applies - see [CFM98820](#) - and HMRC issues a closure notice setting out the revised membership of that group, and a [total disallowed amount](#) greater than zero. (HMRC would also appoint reporting companies for the other sub-groups' worldwide groups, to the extent that they contain UK group companies, under PARA49)

As far as the original reporting company's group is concerned, there is an inaccuracy meeting condition A in PARA26(2), and so a penalty could arise if that was considered a careless inaccuracy.

Suppose the reporting company or, say, the US GAAP reporting group's parent, sought advice from a suitably qualified adviser on what actions were required by the group to comply with the interest restriction legislation. The group was advised that it was correct to file a single return for a worldwide

group, including all the members of all of the subgroups. This advice proved to be incorrect. The inaccuracy here would not be careless, because the reporting company (or a person acting on its behalf in the form of the US GAAP parent) had taken reasonable steps to ensure accuracy by seeking advice from a suitably qualified adviser. This should be the case even if the advice was that the conclusion on the point was finely balanced. This would be a case of a reasonably arguable view of a situation that was subsequently not upheld - see [CH81130](#).

If the group engaged the advisor to give advice and then prepare the return, PARA26(6) would come into play, so that there would not be a careless inaccuracy; the reporting company would have taken reasonable care to avoid the inaccuracy.

If the group simply filed its return, without taking any advice and dealt with the issue wholly in-house and in so doing failed to consider the question of the composition of the group, the relevant legislation and manual guidance, this could be considered as careless inaccuracy, particularly if there were other errors in the return, suggesting a lack of care by the reporting company in developing adequate systems for preparing tax returns.

Finally, if the group acted on advice that where the identity of a group was uncertain, and therefore the [total disallowed amount](#) was automatically zero, this is advice which a prudent and reasonable taxpayer should be reluctant to accept: it would be inherently unlikely that this should be a reasonably arguable position. An inaccuracy arising from relying on such advice, without taking steps to check it, would amount to a careless inaccuracy.

# CFM99040 Interest restriction: Administration: Penalties: Notional tax on the return

## TIOPA10/SCH7A/PARA30(5)

It would be very difficult to work out the additional tax that might be payable by the members of a [worldwide group](#) solely attributable to the settlement of an interest restriction enquiry. A multiplicity of consequential claims might be made.

Accordingly, any penalty is based on a notional tax figure. The first step is to work out the sum of the:

- increase in the [total disallowed amount](#) (meeting condition A in TIOPA10/SCH7A/PARA30(2)) and
- reduction in the [interest reactivation cap](#) (meeting condition B in PARA30(3)),

one of which may be zero - see [CFM98430](#).

This amount is then multiplied by the average main rate of UK corporation tax for the [period of account](#), computed by taking into account the number of days in the period that a particular rate applied.

Should this give an unfair result, because the notional tax is likely to be significant greater than any actual loss of tax from the group as a whole, this can be counteracted by a reduction in the penalty under PARA33, see [CFM99050](#).

# **CFM99050 Interest restriction: Administration: Penalties: Factors which may reduce the level of penalty on an incorrect return**

## **TIOPA10/SCH7A/PARA33**

Penalties for an incorrect interest restriction return under TIOPA10/SCH7A/PARA30 (and also penalties under PARA32) may be reduced to take into account the quality of the disclosure of the inaccuracy. In particular, the timing nature and extent of the disclosure are dealt with in PARA33. The approach is the same as that under the general penalty regime in FA07/SCH24.

### **Reductions in penalty levels for disclosure**

A disclosure is made by informing an officer of Revenue and Customs of the inaccuracy, assisting HMRC in quantifying an inaccuracy, and allowing access to relevant records to ensure that it is fully corrected, PARA33(4).

The reduction in penalty in respect of disclosure cannot reduce the penalty below certain minimum levels, as follows.

For careless inaccuracy, the minimum level of penalty is 15% of [the notional tax](#) for a prompted disclosure, and nil for an unprompted disclosure. The distinction between prompted and unprompted disclosure is discussed at [CH82420](#).

A disclosure is unprompted (PARA33(4)(b)) if it is made at a time when the person making it has no reason to believe that HMRC have discovered, or are about to discover, the inaccuracy or under-assessment. Otherwise a disclosure is prompted. It would be unusual for a disclosure to be unprompted if made after an enquiry into an interest restriction return has been opened, see [CH82421](#). There is no halfway house between an unprompted and prompted disclosure; it is either one or the other.

A disclosure will be treated as unprompted even if at the time it is made the full extent of the disclosure is not known, as long as the full details are provided within a reasonable time.

Where a disclosure relates to a deliberate but not concealed inaccuracy, the lowest penalty level is 30% of the notional tax for an unprompted disclosure,

and 45% otherwise. These levels rise to 40% and 60%, respectively, for concealed deliberate inaccuracies.

Reductions in penalties may also be made for special circumstances under Para 33(5) to (7), see [CFM99054](#) and [CFM99057](#).

# **CFM99054 Interest restriction: Administration: Penalties: Reductions in penalty levels for special circumstances - general**

## **TIOPA10/SCH7A/PARA33(5), (6)**

Under TIOPA10/SCH7A/PARA33(5), an officer of Revenue and Customs may, if considered appropriate due to special circumstances,

- reduce a penalty under PARAS 30 or 32; or
- stay (stop or postpone the enforcement of) the penalty, or agree a compromise or settlement.

Staying a penalty means stopping or postponing enforcement of a penalty. Agreeing a compromise or settlement allows HMRC to forego all or part of a penalty.

Under the Corporate Interest Restriction legislation, the matters that may be taken into account are extended by PARA33(7) to include consideration of whether and to what extent the notional tax, computed in accordance with PARA30(5) exceeds, or is [likely to exceed any actual loss to the Crown](#).

As in the equivalent provision in the general penalties legislation, FA07/SCH24/PARA11, "special circumstances" do not include an inability to pay.

Guidance on "special reduction" in relation to penalties generally is found at [CH170000](#) et sq. This guidance is applicable to all matters other than notional tax exceeding the likely actual loss of tax.

Such special circumstances will be unusual see [CH170600](#) and [CH170900](#). In particular they do not include

- the level of disclosure, which is dealt with under PARA33(4), see [CFM99050](#), or
- whether the taxpayer took reasonable care - if that is the case no penalty will be due.

The officer dealing with the case should not enter into discussions regarding the amount of any special reduction - see [CH170500](#). If it is right to reduce a penalty because of special circumstances (other than a difference between

the [likely loss of tax to the Crown and the notional tax](#)), TALA (Tax Administration Litigation and Advice: Process Design & Excellence) will calculate the level of the reduction, see [CH175000](#).

It is unlikely that a reduction for special circumstances will apply to a penalty where behaviour is considered to be deliberate, whether or not concealed. In that situation it would not normally be enough for the reporting company to claim that an error or failure was caused solely by exceptional circumstances, see [CH170900](#).

For cases where the notional tax exceeds or is [likely to exceed any actual loss of tax to the crown](#).

# **CFM99057 Interest restriction: Administration: Penalties: Special reduction where notional tax exceeds actual loss of tax**

## **TIOPA10/SCH7A/PARA33(7)**

The penalties under TIOPA10/SCH7A/PARAS 30 and 32 differ from normal tax-based penalties within FA07/SCH 24 in that they are based on the "notional tax" computed in accordance with PARA30(5) rather than "potential lost revenue" (FA07/SCH7A/PARA5, [CH82150](#)). Accordingly, it is possible that the notional tax exceeds or is likely to exceed the actual loss of tax to the Crown that would have arisen from the inaccuracy. This is most likely to be case where there are losses or other reliefs available to UK group companies in the [worldwide group](#) that might lessen the loss of tax attributable to the inaccuracy.

Where a reporting company claims that this is the case, a realistic approach must be taken to estimating the actual loss of tax. The group has a great deal of flexibility in arranging its affairs and will normally have 36 months after the end of a period of account to file a [revised interest restriction return](#) and [statement of allocated interest restrictions](#) or reactivations. (See [CFM98780](#) in relation to amendments of an interest restriction return during the course of an enquiry.) PARA72 extends the time limit for consequential claims in company tax returns on completion of an enquiry [CFM98880](#). The estimation of the likely loss of tax should take into account the entire picture: not only the direct impact on the tax payable by UK group companies for relevant accounting periods that overlap the worldwide group's period of account, but also the consequential effects on earlier and later periods of account.

For instance, if it is claimed that tax losses would reduce the additional tax payable by a UK group company in consequence of an inaccuracy in a corporate interest restriction return, there are three issues that need to be addressed:

11. Is there consistency between the computation of the UK group company's tax position with and without the correction for the inaccuracy? For instance any available tax losses should be taken into account both with and without the correction.
12. The estimation of tax on one company (taking into account losses and other claims) should take into account the consequential effects of losses or relief being used to cover the effects of the correction on liabilities of



that company or other UK group companies in the same, earlier or later period of account. As a rule of thumb it should be appropriate to consider the impact of losses or reliefs in any previous period to which carry-back might have been available and to look at the estimated position for three future years. This three-year look forward reflects the 36 month period in which the group can finalise its position; once that 36 month period has passed, the group should have a reasonable idea of its tax position three years forward and its ability to use losses and reliefs carried forward.

13. A difference between actual or likely loss of tax and the notional tax will only justify a special reduction in penalty where it is substantial and, in particular, sufficiently large that, in the absence of the special reduction, the strict application of PARA 30 or 32 would produce a result that is contrary to the clear compliance intention underlying the law, see [CH170600](#).

A special reduction arising from an excess of the notional tax over the actual or likely loss of tax is specific to the Corporate Interest Restriction. Accordingly where it is considered that an adjustment is required, or where a reporting company contends that one should be made for this reason only, the officer of Revenue and Customs handling the case must refer it to:

Corporate Interest Restriction Product Owner, HMRC Business Assets and International, Financial Products Group.

If there are other reasons for considering such a reduction, authority is required from TALA (Tax Administration Litigation and Advice, Process Design & Excellence) who will calculate the level of the reduction, see [CH175000](#).

# **CFM99060 Interest restriction: Administration: Penalties: Inaccuracy attributable to company other than reporting company**

## **TIOPA10/SCH7A/PARA32**

TIOPA10/SCH7A/PARA32 can impose a penalty on a company that causes an inaccuracy to occur in an interest restriction return submitted by a different company, but only in cases where false information is supplied deliberately or information deliberately withheld. Such a penalty is analogous to a penalty under FA07/SCH24/PARA1A, see [CH81166](#) and [CH81075](#).

Such a penalty can apply in addition to a penalty on the reporting company under PARA30, see [CFM99020](#). The level of penalty before any reduction for disclosure or special circumstances [CFM99050](#), [CFM99057](#) is 100% of the notional tax [CFM99040](#).

# **CFM99070 Interest restriction: Administration: Penalties: Assessment payment and enforcement of penalty**

## **TIOPA10/SCH7A/PARA34**

TIOPA10/SCH7A/PARA34 provides mechanics for enforcing a penalty under [PARA30](#) or [PARA32](#).

An officer of Revenue and Customs must assess the penalty, and notify the company, within 12 months of the day on which the inaccuracy was corrected. It must be paid with 30 days of its assessment or, where the penalty is [appealed](#), within 30 days of the day on which the appeal is finally determined or withdrawn.

The penalty so assessed may be enforced as if the assessment were to corporation tax. An effect of this is that the provisions of CTA10/PT22/CH6 (Collection etc. of tax from UK representatives of non-UK resident companies) and CH7 (Recovery of unpaid corporation tax due from non-UK resident company) come into play. Chapter 7 enables unpaid corporation tax (and thus penalties under TIOPA10/SCH7A/PARA30 or 32 due from a non-UK resident company to be recovered from a related company. Companies will be related companies, under CTA10/S976, if both are 51% subsidiaries of the same company. Under TIOPA10/SCH7A/PARA34(4)(b), the penalty may be treated as if it were an assessment to corporation tax on any UK group company in the worldwide group.

# **CFM99080 Interest restriction: Administration: Penalties: Appeals against penalties for an incorrect return**

## **TIOPA10/PARAS 35, 36.**

TIOPA10/PARA 35 provides that a company can appeal against the levying of a penalty under PARA30 or 32 or its amount. PARA36(1) requires the appeal to be made to HMRC within 30 days of receiving notification of the penalty.

The tribunal can accept or reject an appeal against a decision to impose a penalty. Where the appeal is against the amount of a penalty, the tribunal is also permitted to substitute a revised amount, but only if HMRC had the power to impose a penalty of that amount.

Where the tribunal substitutes a different level of penalty, it may make a reduction for special circumstances under PARA33(5), see [CFM99050], either to the same extent as an officer of HMRC, whilst substituting a different starting point, or to a different extent, but only if the tribunal considers HMRC's decision to have been flawed, when considered in the light of principles applied in judicial review (PARA36(4) and (5)). For further guidance on the application of this approach in the general penalty regime (FA07/SCH24), see [CH64000](#).

The provisions of TMA70/PT5 apply as they do for an appeal against an assessment to corporation tax. For general guidance on appeals procedures see [ARTG2400](#) et seq.

# **CFM99090 Interest restriction: Administration: Penalties: Payments between group companies in respect of penalties**

## **TIOPA10/SCH7A/PARA37**

TIOPA10/SCH7A/PARA37 provides that payments from members of a [worldwide group](#) to a reporting company in respect of an agreement in relation to a penalty are not taxable income, or treated as distributions, so long as those payments do not exceed the penalty. This allows the cost of a penalty to be shared amongst the members of a group without that causing tax complications, in a similar way to payments for group relief.

# **CFM99100 Interest restriction: Administration: Penalties: Penalties for failure to keep and preserve records**

## **TIOPA10/SCH7A/PARA39**

Where a reporting company fails to keep and preserve records as required by TIOPA10/SCH7A/PARA38 [CFM98890](#), it is liable under PARA35 to a penalty not exceeding £3,000. The penalty must be assessed by HMRC within 12 months of the date that HMRC becomes aware of the failure, and the company must be notified.

The company may appeal against such a penalty within 30 days.

The penalty is payable within 30 days of notification or, if an appeal is made, within 30 days of the appeal being settled or withdrawn.

# **CFM99110 Interest restriction: Administration: Penalties: Penalties for failure to comply with information notices**

## **TIOPA10/SCH7A/PARA66(1), FA08/SCH36/PT7**

The penalties and offences provisions in FA08/SCH36/PTS7 and 8 are applied to the interest restriction information powers by TIOPA10/SCH7A/PARA66(1) - see [CFM98970](#). For further guidance see also [CH26000](#) et seq. A brief outline of the relevant provisions follows.

The initial penalty for failure to comply with an information notice is £300, FA08/SCH36/PARA39. Under FA08/SCH36/PARA40, there is a daily penalty of £60 for continuing default. There is no penalty if HMRC has allowed additional time to comply with a notice - FA08/SCH36/PARA44.

FA08/SCH36/PARA40A provides for penalties for a careless inaccuracy or deliberate inaccuracy. These terms are interpreted as at [CFM 99030] in relation to inaccuracies in a return.

The maximum penalty is £3,000 (a figure that may be adjusted for inflation).

A penalty does not arise if the company satisfies HMRC that there is a reasonable excuse for a failure - FA08/SCH36/PARA 45.

A penalty must be assessed by HMRC, and the company notified- FA08/SCH36/PARA 46. Under FA08/SCH36/PARAS 47 and 48, the company has the right to appeal, in writing, within 30 days of notification, against the penalty itself, and the level of the penalty. The tribunal may confirm or cancel the decision on the penalty, or substitute another decision that HMRC was entitled to make.

# CFM95190 Glossary of Terms

## Introduction

This glossary is designed to give a brief description of each term and provide you with a link to the most relevant provision in the corporate interest restriction (CIR) legislation and the most relevant guidance.

Underlined terms also appear in the glossary, but are not hyperlinked. References to Corporate Finance Manual (CFM) pages are hyperlinked. The glossary also identifies the elections that may be made in applying the legislation.

There is also a collation of terms particularly relevant to carry-forward rules at [CFM98220](#).

An index of defined expressions used in TIOPA10/PT10 can be found at TIOPA10/SCH11/PT7.

## Abbreviated interest restriction return (for a worldwide group)

TIOPA10/SCH7A/PARA20 [CFM98440](#)

An abbreviated interest restriction return is an interest restriction return with more limited content, which is valid where the worldwide group is not subject to interest restrictions in the return period and where the reporting company has made an abbreviated return election. It identifies the UK group companies in the worldwide group, but does not contain a statement of calculations.

## Abbreviated return election

TIOPA10/SCH7A/PARA18 [CFM98460](#), [CFM98440](#)

A reporting company may elect to make an abbreviated interest restriction return where the worldwide group is not subject to interest restriction in the return period. The election is made within an interest restriction return for the period of account to which the election relates.

## Accounting period

CTA09/CH2

This term is used in relation to UK group companies and takes its normal corporation tax meaning. Worldwide groups have periods of account.



## Accounts-free period

TIOPA110/S485, 486 [CFM95420](#) [CFM95430](#)

A period for which a worldwide group does not or is treated as not drawing up consolidated financial statements. Its periods of account are then 12-month periods starting at the beginning of the accounts free-period ("default periods of account") - unless it makes an election under S486 to set a different date.

## Adjusted net group-interest expense (of a worldwide group) - ANGIE

TIOPA10/S413 [CFM95950](#)

Adjusted net group-interest expense of the worldwide group (ANGIE) is added to any excess debt cap brought forward amount to calculate the fixed ratio debt cap. It is calculated for a worldwide group for a period of account by making certain adjustments to the net group-interest expense (NGIE) of the group for the period. Adjustments are made for capitalised interest, interest recognised as equity, amounts in respect of debt releases/modifications and dividends payable on preference shares. ANGIE is also the starting point for computing qualifying adjusted net group-interest expense (QNGIE), which is used in applying the group ratio method.

## Aggregate net tax-interest expense (of a worldwide group)

TIOPA10/S390 [CFM95605](#)

The aggregate net tax-interest expense of a worldwide group is fundamental to the corporate interest restriction regime and is measure of a worldwide group's net corporation tax deduction, if any, for tax-interest. Its computation involves the aggregation of tax-interest expense amounts and tax-interest income amounts of the group's UK group companies. Specifically, it is computed as the excess (if any) of the aggregate of the tax-interest expense amounts of the group's "relevant companies" over the aggregate of the tax-interest income amounts of the group's relevant companies. A relevant company is a company that is a UK group company for all or part of the worldwide group's period of account.

A negative sum is treated as zero (and would constitute the group's aggregate net tax-interest income).

## Aggregate net tax-interest income (of a worldwide group)

TIOPA10/S390 [CFM95605](#)

The aggregate net tax-interest income of a worldwide group is the converse of aggregate net tax-interest expense and cannot be a negative number. It is computed as the excess (if any) of the aggregate of the tax-interest income amounts of the group's relevant companies over the aggregate of the tax-interest expense amounts of the group's relevant companies. A relevant company is a company that is a UK group company for all or part of the worldwide group's period of account.

It is a component of interest allowance and can increase the amount available to be carried forward.

## Aggregate tax-EBITDA (of a worldwide group)

TIOPA10/S405

Aggregate tax-EBITDA is a tax measure of the worldwide group's Earnings Before Interest, Taxes, Depreciation and Amortisation. The starting point in the computation is the amounts taken into account in computing the corporation tax position of companies in the group, so a UK tax nexus is implicit.

Aggregate tax-EBITDA is used in the calculation of the interest allowance of the group for a period of account (and hence the total disallowed amount or interest reactivation cap and any interest allowance available to carry forward) under the fixed ratio method or the group ratio method. It is the sum of the amounts of tax-EBITDA of each company that was a member of the worldwide group for part or all of the period of account. Positive and negative amounts can be aggregated, but a negative total is treated as aggregate tax-EBITDA of zero.

## Alternative calculation

TIOPA10/S423-S426 [CFM96630](#)

The alternative calculation provisions are applied where an interest allowance (alternative calculation) election is in effect. This election is irrevocable. Notwithstanding the name of the election, the method applies to the calculation of both group-interest and group-EBITDA. Its effect is to more closely align these amounts with UK tax rules. As it can alter the calculation of

the applicable debt cap, it can be applied whether or not a group ratio election is in effect.

Application of the method can change the amounts brought into account in respect of capitalised interest, employer's pension contributions, employee share schemes and changes in accounting policy.

## **Amount available for reactivation (of a company)**

### **TIOPA10/SCH 7A/PARA26 [CFM98620](#)**

This amount limits the amount of previously disallowed tax-interest that a UK group company may reactivate in the period of account of a worldwide group of which it is a member for at least some of its accounting period. The limit takes account of both the tax history of the company and the worldwide group's interest reactivation cap.

The formula is not straightforward, because it must deal with company accounting periods that may not coincide with the worldwide group's period of account and the possibility that a company may join or leave a worldwide group during the group's period of account. The limit is the lower of two amounts. The first is the worldwide group's interest reactivation cap restricted on a time basis where the company is not a member of the group for its entire period of account. The second is the amount of cumulative disallowed tax-interest of the company that has not either already been reactivated in or before the company's "specified accounting period" (or, where that accounting straddles two worldwide group periods of account, offset against amounts that would otherwise have been disallowed).

The specified accounting period is the first relevant accounting period of the company (that is straddling the worldwide group period of account) in which the company is a member of the worldwide group.

Within a worldwide group period of account, amounts must be reactivated in an earlier company accounting period before a later one.

## **Associate**

### **TIOPA10/S429(5)**

In the context of the definition of a non-consolidated associate, associate takes its accountancy meaning.

## Associated

TIOPA10/S449(2) [CFM97420](#)

For the purposes of the public infrastructure provisions in Chapter 8, a company is associated with another company where the companies are members of the same worldwide group.

## Associated worldwide group

TIOPA10/S428 [CFM96770](#)

This is a term used in the rules describing the non-consolidated investment provisions, which apply where an interest allowance (non-consolidated investment) election is in effect in relation to a specified non-consolidated associate. It is the worldwide group of which the specified non-consolidated associate is the ultimate parent. Note that an associated worldwide group could be a single entity - in effect a single company worldwide group.

## Available (interest allowance of a worldwide group)

TIOPA10/S393 [CFM98240](#)

This is the amount of interest allowance from an earlier worldwide group period of account (the "generating period") that is available for use (in computing the worldwide group's interest capacity and thence its total disallowed amount or interest reactivation cap) in a later period of account (the "receiving period") because it has neither been used nor time-expired. Detailed rules apply. See also unexpired and used interest allowance of a worldwide group.

## Basic interest allowance (of a worldwide group)

TIOPA10/S396(2) [CFM95220](#)

Computation of a worldwide group's basic interest allowance for a period is a stepping point in computing its interest allowance and thence interest capacity for the period. It does not take into account any interest allowance brought forward from earlier periods, or the de minimis amount. The amount depends on whether the fixed ratio method or group ratio method is applied.

Where the fixed ratio method applies, it is the lower of:

- 30% (the fixed ratio) of aggregate tax-EBITDA of the worldwide group; and
- the fixed ratio debt cap

Where the group ratio method applies, it is the lower of:

- the result of multiplying aggregate tax-EBITDA of the worldwide group by the group's group ratio percentage; and
- the group ratio debt cap.

## **Blended group ratio election**

**TIOPA10/SCH7A/PARAS12(3)(b), 14 [CFM98460](#)**

This is an election to apply the blended group ratio provisions. It is made in a worldwide group's interest restriction return and can only be made where a group ratio election is in effect.

## **Blended group ratio provisions**

**TIOPA10/S401-S404 [CFM96850](#)**

This is an alternative method of computing the group ratio where a number of investors holds a group (a joint venture). It cannot be made unless a shareholder is a related party investor and a member of a different worldwide group. To apply this method the group must make a blended group ratio election. The group ratio is then a weighted average of the applicable percentages for each investor group. The applicable percentage is the highest of 30% (the fixed ratio), the investee group's group ratio calculated in the normal manner, and the investor group's group ratio.

## **Consenting company**

**TIOPA10/SCH7A/PARAS10, 11, 1(6) [CFM98570](#)**

A consenting company is a UK group company in a worldwide group, which has agreed to accept the allocation of disallowed amounts made to it in the group's interest restriction return submitted by the reporting company.

A company becomes a consenting company if it has notified HMRC and the group's reporting company that it wishes to be a consenting company. The company is deemed to have made a notification if it is listed as a company authorising the appointment of the reporting company and it is not stated in the list that it does not wish to be treated as a consenting company.

In either case, it may cease to be treated as a consenting company by notifying the reporting company and HMRC to this effect.

## Consolidated financial statements

The term "consolidated financial statements" as used, for example, in the definition of IAS financial statements, is not specifically defined in the legislation and has the meaning it has for accountancy purposes.

## Consolidated partnership

TIOPA10/S430(4)-(6) [CFM96830](#)

A consolidated partnership is a partnership whose results are consolidated in the financial statements of the ultimate parent of the worldwide group, and which does not itself have a subsidiary company. For the effects of the relevant election, see under interest allowance (consolidated partnerships) election.

## Consolidated subsidiary (of another entity)

TIOPA10/S475 [CFM95460](#)

A consolidated subsidiary is a subsidiary which, applying IAS, is not fair valued through profit or loss (see fair value accounting), in other words, a subsidiary which is consolidated on a line-by-line basis. (The statutory definition works by excluding a non-consolidated subsidiary from the definition). Such a company will normally be a member of its ultimate parent's worldwide group. Note that for the purposes of this definition it is to be assumed that all entities are subject to IAS, regardless of any consolidated financial statements that might be drawn up under other accounting standards.

## De minimis amount (for a worldwide group)

TIOPA10/S392(3) [CFM95220](#), [CFM98220](#)

The de minimis amount for a period of account is £2m per annum, adjusted on a pro rata basis for the length of the period of account. This sets a minimum value to the group's interest capacity for the period. Consequently, groups with sufficient aggregate net tax-interest expense are able to deduct at least this amount in a period of account (except in certain cases where they include qualifying infrastructure companies that receive tax-interest income from related party qualifying infrastructure companies - see [CFM97390](#)). However, the de minimis amount is not taken into account in computing the group's interest allowance for a period, so any excess of the de minimis amount over its aggregate net tax-interest expense is not available for carry-forward.

## Debt cap

TIOPA10/S400 [CFM95230](#) [CFM95240](#)

This is a measure based on the net external interest and similar expense (group-interest) of the worldwide group and sets a maximum limit to the worldwide group's basic interest allowance for a period of account. Where a worldwide group applies the fixed ratio method, it is the fixed ratio debt cap that is in point, but where the group ratio method is applied, it is the group ratio debt cap that must be considered.

## Defined expressions

An index of defined expressions used in TIOPA10/PT10 can be found at TIOPA10/SCH11/PT7.

## Determination

TIOPA10/SCH7A/PARAS56-58 [CFM98560](#) [CFM98870](#)

The legislation permits HMRC to make a determination on a UK group company in two quite different circumstances. The determination, made to the best of an officer's information and belief, has the effect of restricting the company's corporation tax deduction for tax-interest. The worldwide group's interest restriction must be allocated on a pro-rata basis.

The first is where a reporting company is in place for a worldwide group, but it has not submitted an interest restriction return (or one that meets the requirements of the legislation) within the applicable time limit.

The second circumstance is where a closure notice has been issued in respect of an interest restriction return enquiry, but the reporting company neither has appealed nor completed the actions required by the closure notice.

## Disallowance

TIOPA10/S378(1)

Disallowance is the process of applying an interest restriction. The process involves leaving tax-interest expense amounts out of account in computing a UK group company's corporation tax position for an accounting period. This can be due to the allocation of an interest restriction in a statement of allocated interest restrictions. However, a non-consenting company may elect not to accept an amount so allocated, but instead leave out of account

amounts summing to the pro-rata share, according to its own computation, see [CFM98650](#).

The pro-rata share is also disallowed where the worldwide group is subject to an interest restriction but has not submitted a compliant interest restriction return within the applicable time limit. The company is then obliged to make the disallowance in its company tax return.

A disallowance can also arise or in consequence of a determination by an officer of Revenue and Customs.

## **Disallowed tax-interest amounts carried forward (by a company)**

### **TIOPA10/S378**

Where a company as the result of an interest restriction has disallowed an amount of tax-interest, the company may carry it forward and it is potentially subject to reactivation in a later accounting period. It is an attribute of that company rather than of the worldwide group of which it may be a UK group company at any particular time. There are circumstances in which the attribute may be lost, for example, where the scale of the company's business becomes negligible, see [CFM98670](#).

## **Disregarded period (of a company)**

TIOPA10/S382(7), S385(8), S406(6) [CFM95620](#), [CFM95730](#)

These are periods within a company's accounting period that fall outside the worldwide group's period of account, or which relate to a time during which the company was not a member of that group. In computing the company's tax-interest amounts and tax-EBITDA, amounts are attributed to any disregarded periods on a just and reasonable basis. A disregarded period may arise on commencement where a company's accounting period straddles 1 April 2017.

## **Elections**

The legislation contains a number of elections that may be made and, in some cases, revoked. For detail, see the relevant guidance signposted from this glossary.

A reporting company may make the following elections within an interest restriction return:



Abbreviated return election

Group ratio election

Group ratio (blended) election

Group-EBITDA (chargeable gains) election

Interest allowance (alternative calculation) election

Interest allowance (consolidated partnerships) election

Interest allowance (non-consolidated investment) election

The following elections may be included in a company tax return:

- Election by non-consenting company not to accept allocated disallowance (TIOPA10/S375(3) SCH7A/PARA69, [CFM98650](#)).
- Election by a company to override the default method for identifying items of tax-interest that are disallowed (TIOPA10/S377(3), Para 69(5), [CFM98660](#)).
- Election by a company to override the default method for identifying items of tax-interest that are reactivated (TIOPA10/S387(3), Para 69(5), [CFM98690](#)).
- Qualifying infrastructure company elections. A valid election must be made for a company to be treated as a qualifying infrastructure company. Further elections can be made to modify its effect in relation to groups of qualifying infrastructure companies and joint venture groups. TIOPA10/S433-435, [CFM97240](#) to [CFM97290](#).

The following further elections are also possible:

- Creditor loan relationships at fair value. A company may elect under TIOPA10/S456 that certain creditor loan relationships carried at fair value, but subject to hedges should be treated as if accounted for on an amortised cost basis, modified in relation to insurance activities. See [CFM97525](#).
- Where the ultimate parent of a worldwide group does not draw up consolidated financial statements, it may make an election under S484(3), which has the effect that the ultimate parent's single entity financial statements do not determine the worldwide group's period of account. See [CFM95480](#).

- Election to set an end date for period of accounts different from the default date in an accounts-free period. (TIOPA10/S486 [CFM95430](#)).

The following elections relate to commencement or transition:

- PT4/P31. This allows a UK group company to make an election which alters the application of the [Disregard Regulations](#), SI2004/3256.
- PT4/P32. This is a transitional election relating to qualifying infrastructure elections, see [CFM97250](#).

## Eligible company

TIOPA10/SCH7A/PARA1(7), 2(7) [CFM98470](#)

In the context of the appointment of a reporting company for a worldwide group, an eligible company is a company that was a UK group company for any part of the period of account of the worldwide group in the period in which the appointment or revocation is made and was not dormant throughout the period.

## Enquiry

See "interest restriction return enquiry".

## Entity

See under "relevant entity"

## Excess Debt Cap (for a worldwide group)

TIOPA10/S400(3) - (7) [CFM98250](#)

Excess debt cap can arise where a worldwide group is subject to interest restriction in a period of account (or has been in an earlier period) but the debt cap is not the limiting factor in computing a group's basic interest allowance for a period. Excess debt cap is computed for a period of account and carries forward only to the immediately subsequent period. As the excess debt cap brought forward is a component in the computation for the debt cap for each period, the amount carried forward can be influenced by past events. Where the fixed ratio method applies in a period of account the excess debt cap is the fixed ratio debt cap for the period less 30% of aggregate tax-EBITDA. Where the group ratio method applies, it is the group ratio debt cap for the period less the group ratio percentage of aggregate tax-EBITDA. Excess debt

cap carried forward from a period of account is subject to a carry-forward limit: the excess brought forward plus the total disallowed amount for the period.

## Fair value accounting

### TIOPA10

Fair value accounting means a basis of accounting under which assets and liabilities are measured in the company's balance sheet at their fair value, and changes in the fair value of assets and liabilities are recognised as items of profit or loss.

## Filing date

### TIOPA10/SCH7A/PARA7(5), [CFM98520](#)

Where a reporting company is in place, it is required to file an interest restriction return for its worldwide group for its period of account. The filing date is the later of:

- 12 months after the end of the period of account to which the return relates; or
- 3 months after the appointment the reporting company.

Penalties apply where the return has not been submitted by the filing date - see PARA29.

## Finance lease

### TIOPA10/S494(1)

A finance lease is a lease that, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a finance lease or loan in the accounts of the company or the financial statements of the group.

For the purposes of the Corporation Tax Acts, FA11/S53 has the effect of preserving the accounting treatment for leases for the purposes of Corporation Tax. As such, the rules would currently follow the accounting treatment ignoring any changes due to the application of IFRS 16 (lease accounting). Following the Autumn Budget 2017, the government consulted on the approach to leases following the introduction of IFRS 16. The effect of that standard on the corporate interest deduction rules will be considered as part of that consultation.

## Financial Statements (of a worldwide group)

TIOPA10/S479 [CFM95310](#), [CFM95440](#)

The financial statements of a worldwide group are normally the financial statements of the ultimate parent and its subsidiaries. However, for a single company worldwide group, they are the financial statements of that entity. These financial statements of the group are used in determining, net group-interest expense (NGIE), and thence adjusted net group-interest expense (ANGIE) and qualifying net group-interest expense (QNGIE) and group-EBITDA.

However, in applying the corporate interest restriction legislation, particularly in defining the worldwide group and identifying its periods of account, the actual financial statements may be deemed to be subject to modification if they are not drawn up under IAS. See [CFM95450](#).

## Fixed ratio debt cap (for a worldwide group)

TIOPA10/S400(1)

The Fixed Ratio Debt Cap for a worldwide group's period of account is the sum of the adjusted net group-interest expense (ANGIE) and any excess debt cap brought forward from the previous period. It is applied in computing the group's basic interest allowance for a period of account and thence its interest allowance and interest capacity.

## Fixed ratio method

TIOPA10/S397 [CFM95230](#)

The Fixed Ratio Method is the default method for the calculation of the basic interest allowance of a worldwide group for a period of account and applies unless a group ratio election is made. Under this method, the basic interest allowance is the lower of two amounts. The first is 30% (the fixed ratio) of the group's aggregate tax-EBITDA. The second amount is the fixed ratio debt cap.

## Full interest restriction return (for a worldwide group)

TIOPA10/SCH7A/PARA18 [CFM98430](#)

A full interest restriction return is required where, a reporting company is in place for a worldwide group and the group is subject to interest restriction for a period of account. A full interest restriction return is also required where the

group is able to and wishes to reactivate amounts that have been disallowed in an earlier period, or to carry forward unused interest allowance from that, or an earlier, period. Like an abbreviated interest restriction return, a full return identifies the companies that were UK group companies for all or part of the period of account. In addition, it states whether interest restrictions or reactivations apply, includes a statement of calculations required under the legislation and, as applicable, a statement of allocation of interest restrictions or a statement of allocation of interest reactivations.

## Group

A reference in this guidance or the actual legislation to a "group" should be taken as a reference to a worldwide group, unless the context requires otherwise. In the definition of a worldwide group, the starting point is the group as it would be applying IAS.

## Group-EBITDA

### TIOPA10

Group-EBITDA is based on an accounting measure of the group's profit before tax, increased by its net group-interest expense (NGIE), and adjustments for depreciation and amortisation. It is used in computing the group ratio percentage where a group ratio election has been made.

## Group-EBITDA (chargeable gains) election

TIOPA10/SCH7A/PARA15/S422 [CFM96460](#) and [CFM98460](#)

Groups may make an irrevocable chargeable gains election to make certain prescribed adjustments to the accounting figures, to more closely align them to how amounts of interest and EBITDA would be calculated under UK tax rules. This election has effect only for the group ratio method.

## Group-interest

Group-interest, as opposed to tax-interest, is an accounting measure of interest or interest like expense or income and is computed for the worldwide group as a whole. Three measures of group-interest are defined in the legislation, net group-interest expense (NGIE), aggregate net group-interest (ANGIE) and qualifying net group-interest expense (QNGIE).

The amounts taken into account are based amounts that are or would be reflected in a worldwide group's consolidated financial statements and so will normally only reflect the effects of transactions with parties external to the

group. Unlike in the case of tax-interest, no territorial nexus with the UK is required.

## **Group ratio (blended) election**

TIOPA10/SCH7A/PARAS12(3)(b), 14 [CFM98460](#)

A reporting company may elect on behalf of the worldwide group where a group ratio election is in effect for the group ratio method to include the blended group ratio provisions.

## **Group ratio debt cap (for a worldwide group)**

TIOPA10/S400(2) [CFM95240](#)

The group ratio debt cap is the sum of the qualifying net group-interest expense (QNGIE) of a worldwide group for a period of account and any excess debt cap brought forward from the previous period. It is applied in computing the group's basic interest allowance for a period of account and thence its interest allowance and interest capacity.

## **Group ratio election**

TIOPA10/SCH7A/PARAS12(3)(a), 13 [CFM98460](#)

A reporting company may elect on behalf of the worldwide group that the group ratio method should be used to compute the group's basic interest allowance.

## **Group ratio method**

TIOPA10/S398 [CFM95240](#)

The group ratio method is an alternative way of calculating the basic interest allowance and is used instead of the fixed ratio method where the reporting company of a worldwide group has made a group ratio election for a period of account. Applying this method, the group's basic interest allowance is the lower of two amounts. The first is the group's aggregate tax-EBITDA multiplied by the group ratio percentage. The second amount is the group ratio debt cap.

## Group ratio percentage (for a worldwide group)

TIOPA10/S399 [CFM95240](#)

The group ratio percentage is used to calculate the basic interest allowance of a worldwide group for a period of account under the group ratio method. It is the qualifying net group-interest expense (QNGIE) for the group divided by the group-EBITDA for the group expressed as a percentage. The percentage is capped at 100%.

## IAS

CTA10/S1127(5) [CFM95470](#)

International Accounting Standards (IAS) are defined by reference to Regulation (EC) 1606/2002 of the European Parliament and the Council of 19 July 2002. These are International Financial Reporting Standards as adopted by the EU. Where the EU has adopted a standard with modifications, use of either the original or the modified standard is treated, for the purposes of corporation tax, as conforming to IAS.

Note that consolidated financial statements drawn up in accordance with certain other accounting standards may be acceptable for computing group-interest or group-EBITDA, but not in defining membership of the group.

## IAS Financial Statements

TIOPA10/S488

The IAS financial statements of a worldwide group are financial statements of the worldwide group's ultimate parent and its subsidiaries, drawn up for a period in accordance with International Accounting Standards.

## Impairment loss

TIOPA10/S391, S383(3)9(b), S411(1)(c)(ii) [CFM95630](#) [CFM95930](#)

An impairment loss is an excluded debit and therefore not taken into account as a tax-interest expense amount of a company. It is also excluded from the computation of net group-interest expense (NGIE). It is defined, for the purposes of the corporate interest restriction legislation, as a loss in respect of impairment of a financial asset, but does not include an amount recognised under fair value accounting. The terms, "impairment" and "financial asset" are not specifically defined and take the normal accountancy meaning.

As a result, this will include debit amounts related to:

- a reduction in the asset's value;
- a reduction in the asset's value to zero (asset remains on balance sheet);  
or
- the derecognition of the asset (asset removed from balance sheet).

## **Interest allowance (of a worldwide group for a period of account)**

### **TIOPA10/S396(1)**

The interest allowance of a worldwide group for a period of account is its basic interest allowance plus its aggregate net tax-interest income for the period, if any. In most cases, a group will have an aggregate tax-interest expense, so its aggregate net tax-interest income will be zero. Interest allowance is a stepping-stone in computing the group's interest capacity.

In a period with aggregate net tax-interest income the group has no net tax-interest expense to restrict, so the augmentation of basic interest allowance by aggregate net tax-interest income is only relevant to computing interest allowance available to carry forward.

## **Interest allowance (alternative calculation) election**

### **TIOPA10/SCH7A/PARA12(3)(d), 16 [CFM98460](#)**

A reporting company can make an election in an interest restriction return that a worldwide group should apply alternative calculation provisions when calculating group-interest and group-EBITDA. The effect of these provisions is to bring the amounts used when calculating these figures in line with UK tax principles for a number of areas. The election has effect in the period of account in which it is made and is irrevocable.

## **Interest allowance (consolidated partnerships) election**

### **TIOPA10/S430, SCH7A/PARA12(3)(f), 18 [CFM98460](#) [CFM96820](#)**

A reporting company can make an interest allowance (consolidated partnerships) election in the interest restriction return for a worldwide group for a period of account. It changes the calculation of group-interest and group-EBITDA in relation to amounts relating to consolidated partnerships. The election must identify the partnership or partnerships to which it relates. It applies to the period of account and is revocable.



The effect of the election is that amounts disclosed in the consolidated financial statements of the worldwide group in respect of the consolidated partnership are disregarded and amounts are substituted as if the equity method had been applied in respect of the partnership interest. "Equity method" takes its accounting meaning and as a result of a proportional share of the group-interest and group-EBITDA amounts relating to the partnership is taken into account.

## **Interest allowance (non-consolidated investment) election**

TIOPA10/SCH7A/PARAS12(e), 17

A reporting company can make an interest allowance (non-consolidated investment) election in the interest restriction return for a worldwide group for a period of account. The election specifies one or more non-consolidated associates of a group to which the non-consolidated investment provisions are to apply for that period. It is revocable.

## **Interest capacity (of a worldwide group)**

TIOPA10/S392 [CFM95220](#)

The interest capacity of a worldwide group in a period of account is the interest allowance for the current period of account, plus the aggregate of the interest allowances for earlier periods, as far as they are available in the current period. However, if this is less than the de minimis amount for the period, the interest capacity is the de minimis amount.

[CFM98240](#) deals with the rules determining the availability of interest allowance from earlier periods.

## **Interest reactivation cap (of a worldwide group)**

TIOPA10/S373(3), (4)

The interest reactivation cap is the excess, if any, of a worldwide group's interest allowance for a period of account over its aggregate net tax-interest expense. Subject to detailed rules operating at company level (see [CFM98620](#)), previously disallowed tax-interest of UK group companies up to this amount may be reactivated. Note that this is not the exact converse of the total disallowed amount, because it applies by reference to the interest allowance rather than the interest capacity for the period of account. As a result, you do not take the de minimis amount into account.

## Interest restriction return

### TIOPA10/SCH7A/PARA18

Where either the group or HMRC has appointed a reporting company to act on behalf of the worldwide group, the reporting company is required to submit an interest restriction return . A full interest restriction return is required where, interest restrictions are due for a period, the group wishes to reactivate amounts that have been disallowed in an earlier period, or the group wishes to carry forward unused interest from that or an earlier period. If not, the group may elect to submit an abbreviated interest restriction return.

## Interest restriction return enquiry

### TIOPA10/SCH7A/PARAS40-55 [CFM98720](#)

The corporate interest restriction provisions contain their own bespoke enquiry regime, with some similarities to the provisions for enquiries into a company tax return. An enquiry can be opened into an interest restriction return. Such an enquiry is distinct and separate from an enquiry into a company's tax return and the opening of such an enquiry does not have the effect of opening an enquiry into the company tax returns for the relevant accounting periods of UK group companies. The scope of such an enquiry is restricted to the return and immediately relevant matters.

The group's reporting company is required to handle the enquiry. The provisions allow for issue of a closure notice that requires the reporting company to take steps including amending the interest restriction return. There are mechanics for dealing with misidentified groups and periods of account and to permit and require changes to be made to the company tax returns of UK group companies, notwithstanding time limits that might otherwise have applied. Consequential claims may be possible.

## International accounting standards

See under IAS.

## Member (of a worldwide group)

### TIOPA10/S473(4)(a) [CFM95350](#)

An (accounting) entity is a member of a worldwide group if it is a relevant entity and is either its ultimate parent or a consolidated subsidiary of the ultimate parent.

Note that for the purposes of considering whether an entity is a consolidated subsidiary, it is to be assumed that all entities are subject to IAS, regardless of any consolidated financial statements that might be drawn up under other accounting standards (S475(4)). Therefore, it is IAS, rather than the accounting standards actually used that are relevant to defining the group and thence the ultimate parent and membership of a worldwide group.

## **Multi-company worldwide group**

TIOPA10/S473(4)(d) [CFM95330](#)

A multi-company worldwide group is a worldwide group with two or more members.

## **Net group-interest expense of a worldwide group**

TIOPA10/S410 [CFM95920](#)

Net group-interest expense (NGIE) is an accounting measure of a worldwide group's interest net interest and similar expense for a period of account. It is defined as the sum of the relevant expense amounts less the sum of the relevant income amounts for a period of account. In nature, these amounts correspond broadly to tax-interest. The measurement is by reference to amounts recognised in the financial statements of the group for the period of account as items of profit or loss.

NGIE is the starting point in the calculation of adjusted net group-interest expense (ANGIE) and thence qualifying net group-interest expense (QNGIE). It is added back to the group's profit before tax as part of the calculation of group-EBITDA

## **Net tax-interest expense (of a company)**

TIOPA10/S389 [CFM95605](#)

The net tax interest expense of a company for a period of account, if any, is the sum of its tax-interest expense amounts less the sum of its tax-interest income amounts. Note that the computation of these amounts excludes amounts relating to disregarded periods. The net tax interest expense cannot be a negative number; a negative amount would be the company's net tax-interest income. As these amounts are amounts that are, or would be, taken into account for corporation tax, only a UK group company can have net tax-interest expense. It is taken into account in computing a worldwide group's aggregate tax-interest expense or aggregate tax-interest income for a period of account.

## Net tax-interest income (of a company)

TIOPA10/S389 [CFM95605](#)

The definition of the net tax-interest income of a company for a period of account is the converse of the definition of a company's net tax interest expense. Accordingly, it is the sum of its tax-interest income amounts less the sum of its tax-interest expense amounts. It cannot be a negative number and it is taken into account in computing a worldwide group's aggregate tax-interest expense or aggregate tax-interest income for a period of account.

## Non-consenting company

TIOPA10/SCH7A/PARA10/S375(3) [CFM98570](#) [CFM98650](#)

A non-consenting company is a member of a worldwide group that does not give its agreement (or withdraws agreement) to be bound by the allocation of interest restrictions made to it in the interest restriction return. It can be treated as a non-consenting company if it is not included on the list of companies that authorise the appointment of the reporting company, if it is specified as a non-consenting company on that list, or if it has notified the reporting company and HMRC that it no longer wishes to be treated as a consenting company.

A reporting company is not entitled to allocate more than a pro-rata share of the worldwide group's total disallowed amount to a non-consenting company.

Furthermore, a non-consenting company may elect not to accept the amount allocated by a reporting company and instead substitute its own calculation of its pro-rata share of the total disallowed amount of the group (or possibly some other group of which it considers itself to be a member). This election has no effect on any other members of the reporting company's group.

## Non-consolidated associate

TIOPA10/S429 [CFM96770](#)

Relevant, in particular, to the interest allowance (non-consolidated investment) election, a non-consolidated associate is an (accounting) entity that meets one of three conditions:

- it is a joint venture or associate that is accounted for in the financial statements of the worldwide group for a period of account as a joint venture or an associate using the equity or gross method of accounting;

- it is a partnership in relation to which the worldwide group's reporting company has made an interest allowance (consolidated partnership) election; or
- it is a non-consolidated subsidiary of the ultimate parent for the period.

For the purposes of this definition, "associate", "equity method", "gross equity method" and "joint venture" all take their accountancy meaning.

## **Non-consolidated investment provisions**

### **TIOPA10/S427 [CFM96760](#)**

The non-consolidated investment provisions are special rules where the reporting company of a worldwide group has made an interest allowance (non-consolidated investment) election in relation to a non-consolidated associate for a period of account.

The rules apply in computing both group-interest and group-EBITDA. In essence the rules require amounts in the actual financial statements of the electing worldwide group relating to transactions between that group and the associated worldwide group (which may be a single entity) to be disregarded. Amounts included in the actual financial statements of the electing worldwide group relating to group-income or group EBITDA of the associated worldwide group are left out of account, but a proportionate share of the amounts derived from the associated worldwide group's financial statements are included.

## **Non-consolidated subsidiary of an entity**

### **TIOPA10/S475 [CFM95350](#)**

A non-consolidated subsidiary of another entity is a company that is its subsidiary for accounting purposes, but is treated as an investment measured at fair value (and not consolidated on a line-by-line basis). A non-consolidated subsidiary will not be a member of the worldwide group of which its (accounting) parent is the ultimate parent. However, it may be a non-consolidated associate specified in an interest allowance (non-consolidated investment) election.

## Period of account (of a worldwide group)

TIOPA10/S480-S485 [CFM95400](#)

The period of account of a worldwide group, for corporate interest restriction purposes, is normally the period in respect of which the ultimate parent of the worldwide group draws up consolidated financial statements.

There are specific provisions for more complicated cases such as where statements are not drawn up or the statements prepared are not acceptable, for instance where there is an accounts-free period. In such circumstances a group may be able to elect set aside default rules and select a date to which financial statements are treated as having been drawn up.

## Pro-rata share (company, of total disallowed amount)

TIOPA10/SCH7A/PARAS23, 24 [CFM98590](#)

Pro-rata shares are relevant in limiting the interest restriction the reporting company of a worldwide group may allocate to a UK group company in its statement of allocated restrictions for a worldwide group period of account. Determinations by HMRC will also use pro-rata shares.

The pro-rata share is a share of a worldwide group's total disallowed amount for a period of account, proportional to a UK group company's share of the aggregate total of the tax interest expense amounts of the UK group companies. Note that, for this purpose, a company with a tax-interest income amount is treated as having net tax-interest expense of zero and not a negative amount and therefore, the total of the tax-interest expense amounts may be a higher figure than the group's aggregate net tax-interest expense.

A further rule works out the pro-rata shares for a company's relevant accounting periods, if necessary.

## Public infrastructure asset

TIOPA10/S436(2) [CFM97110](#)

The concept of a public infrastructure asset is fundamental to the public infrastructure provisions (TIOPA10/PT10/CH8) and underlies the definitions of qualifying infrastructure activity.

An asset is (or is not) a public infrastructure asset in respect of each company according to conditions relative to that company.

The two classes of public infrastructure asset are:

- tangible assets forming part of the infrastructure of the UK (or the UK sector of the continental shelf) which meet a public benefit test; and
- buildings (or parts of buildings) that are part of a UK property business and are let or sub-let on a short-term basis to unrelated parties.

In either case, the asset must have an expected economic life of at least 10 years and be reflected in the balance sheet of a UK group company that is fully taxed in the UK.

## Public infrastructure assets test

TIOPA10/S433(5) [CFM97210](#)

To be a qualifying infrastructure company a company must pass the public infrastructure asset test, which requires all but an insignificant proportion of the assets recognised on its balance sheet to be public infrastructure assets. These are:

- tangible assets related to qualifying infrastructure activities carried on by it or an associated qualifying infrastructure company;
- service concession arrangements in respect of such assets;
- financial assets to which a company is party for the purposes of qualifying infrastructure activities that it or another associated qualifying infrastructure company carries on;
- shares in a qualifying infrastructure company; or
- loan relationships etc. to which the only other party is a qualifying infrastructure company.

## Public infrastructure income test

TIOPA10/S433(2) [CFM97200](#)

To be a qualifying infrastructure company a company must pass the public infrastructure income test, which requires all but an insignificant proportion of its income for an accounting period to be derived from the following sources:

- qualifying infrastructure activities carried on by it;
- shares in a qualifying infrastructure company; or

- loan relationships etc. to which the only other party is a qualifying infrastructure company.

## Public infrastructure provisions

TIOPA10/PT10/CH8 (S432-S449) [CFM97100](#)

The public infrastructure provisions define a qualifying infrastructure company and related terms and provide for a special regime to apply to such companies. Where a company makes a valid election to be a qualifying infrastructure company, certain amounts are excluded from being tax-interest expenses of the company. In addition, some other amounts are to be ignored or treated as nil in calculating other figures for the corporate interest restriction. The public infrastructure provisions provide an alternative method of restricting interest expense that does not relate to assets and activity that are taxable in the UK.

## Qualifying infrastructure activity

TIOPA10/S436(1) [CFM97120](#)

For a company to be a qualifying infrastructure company, its business must be limited to qualifying infrastructure activities and/or investing in or financing other qualifying infrastructure companies. The concept of a qualifying infrastructure activity underlies the public infrastructure income test and public infrastructure assets test. Qualifying infrastructure activities are:

- the provision of a public infrastructure asset; or
- the carrying on of any other activity that is ancillary to, or facilitates, the provision of a public infrastructure asset.

The definition of public infrastructure asset imposes the requirement that the infrastructure in question is recognised on the balance sheet of a UK group company that is fully taxed in the UK.

## Qualifying infrastructure company

TIOPA10/S433 [CFM97110](#)

To be a qualifying infrastructure company

- the company must be fully taxed in the UK;
- all, or all but an insignificant proportion, of its income and assets are referable to activities in relation to public infrastructure assets; and



- it must have elected into the provisions of Chapter 8 of the Corporate Interest Restriction rules.

## Qualifying infrastructure company elections

TIOPA10/S433(1)(d), S434, S435, S444-S446 [CFM97240](#), [CFM97260](#), [CFM96910](#)

The public infrastructure provisions include a number of elections.

**Qualifying infrastructure company election.** To be treated as a qualifying infrastructure company, a company must have made a valid election to this effect within the time limit. See [CFM97240](#). Time limits are relaxed on commencement of the CIR regime ([CFM97250](#)). An election has effect for subsequent periods. It can be revoked, but the revocation cannot take effect before 5 years have elapsed. A further 5 years must elapse before a fresh election can take effect. Special rules apply to transfers of business within a group.

The effect of such an election can be modified by a **group infrastructure election** ([CFM97260](#)) made jointly by two or more members of a worldwide group.

There are special rules applying to joint venture companies, which can be extended by a **joint venture election** to certain groups headed by joint venture companies. See [CFM96920](#).

## Qualifying net group-interest expense (of a worldwide group) - QNGIE

TIOPA10/S414 [CFM95900](#)

The qualifying net group-interest expense (QNGIE), of a worldwide group for a period of account, is used as the denominator in the calculation of the group ratio percentage for the group ratio method. In addition, it is added to any excess debt cap brought forward amount to calculate the group ratio debt cap. It is calculated for a worldwide group for a period of account by making certain further "downwards adjustments" to the adjusted net group-interest expense (ANGIE) of the group for the period. One of the effects of these adjustments is to exclude certain related party expense. QNGIE will always be less than, or the same as, ANGIE.

## Reactivation

This is the process by which previously disallowed tax-interest expense amounts of a company may become deductible in computing the company's corporation tax position in a later accounting period. Detailed rules apply; see also interest reactivation cap and subject to interest reactivations.

## Related party

TIOPA10/S462 - S472 [CFM96200](#)

The corporate interest restriction provisions contain extensive provisions defining a related party for the purposes of the provisions, or parts thereof, and the consequence of related party status. In essence, a person is a related party of another person where

- they are part of the same consolidated group;
- there is common participation in the management, control or capital of the parties; or
- the 25% investment condition is met in relation to them.

A 25% investment refers to an investment in equity, which entitles the holder to acquire 25% or more of

- the voting power,
- the disposal proceeds,
- income distributions or
- the assets in the event of a winding-up.

## Related party investor

TIOPA10/S404

The concept of a related party investor is particularly relevant to the group ratio (blended) election in applying the group ratio method. In this context, an entity is considered to be an "investor" where it has an interest in the ultimate parent of a worldwide group, entitling it to a proportion of the profits or losses of the group. If it is also a related party, it will be a related party investor.

## Relevant accounting period (of a company)

TIOPA10/S490, [CFM98635](#)

An accounting period of a company that falls wholly or partly within the period of account of the worldwide group.

## Relevant company

This term is used in the corporate interest restriction provisions but has no generally applicable definition. Instead, it is defined in the particular provision in which it is used. See also UK group company.

## Relevant derivative contracts credit, or debit

TIOPA10/S384, S387 CT09/PT7 [CFM95650](#)

These are derivative contracts debits and credits that are taken into account in computing tax-interest amounts. In essence, the relevant amounts are restricted to those with an interest-like economic character.

## Relevant entity

TIOPA10/S474 [CFM95340](#)

An (accounting) entity can only be the ultimate parent or a member of a worldwide group, if it is a relevant entity. Entity is not a defined term either in the legislation or under IAS. In essence, it is an organisation, whether or not a legal person, for which financial statements might be drawn up. To be a relevant entity, it must be a company defined for Corporation Tax at CTA10/S1121, or a listed entity of which no participator has more than 10% by value. Sovereign powers are excluded.

## Relevant loan relationships credit, or debit

TIOPA10/S383, S386 CT09/PT5 [CFM95630](#)

These are loan relationship debits and credits that are taken into account in computing tax-interest amounts. Notable exclusions relate to impairment and foreign exchange differences.

## Reporting company (for a worldwide group)

TIOPA10/SCH7A/PARAS1-5 [CFM98470](#)

A reporting company is a UK group company appointed on behalf of the worldwide group to deal with the interest restriction regime on behalf of the group. This includes the submission of interest restriction returns and dealing with an interest restriction return enquiry, should there be one. Any member of the group, subject to procedural rules and a time limit, may appoint the reporting company. Such an appointment rolls on into subsequent periods unless revoked. Where no reporting company is appointed within the time limit, HMRC may appoint a reporting company for an accounting period; such an appointment does not roll over. Exceptionally, HMRC may replace a reporting company.

## Revised interest restriction return

TIOPA10/SCH7A/PARA8 [CFM98530](#)

A reporting company may submit a revised interest restriction return for a worldwide group for a period of account that replaces and supersedes any interest restriction return previously submitted. Time limits apply which normally permit a revised return to be submitted up to 36 months after the end of a period of account. This is extended to 60 months where no interest restrictions apply in the period, to allow unused interest allowance for a period to be accessed before it time-expires. Amendments may be made to company tax returns to give effect to a revised interest restriction return even where the normal time limit for such amendments has passed.

## Service concession agreement

TIOPA10/S494

A service concession arrangement is mainly relevant to the public infrastructure rules. It is defined under IAS as an arrangement whereby a government or other public sector body contracts with a private operator to develop (or upgrade), operate and maintain the grantor's infrastructure assets. For example, roads, bridges, tunnels, airports, energy distribution networks, prisons or hospitals.

## Single-company worldwide group

TIOPA10/S473(4)(c) [CFM95330](#)

A single-company worldwide group is a group whose only member is its ultimate parent.

## Statement of allocated interest reactivations

TIOPA10/SCH7A/PARA25 [CFM98610](#)

This is a statement forming part of a full interest restriction return, which allocates the worldwide group's interest reactivation cap, if any, between UK group companies. If the group does not appoint a reporting company that submits a full interest restriction return including such a statement, its members cannot benefit from interest reactivations.

## Statement of allocated interest restrictions

TIOPA10/SCH7A/PARA22 [CFM98580](#)

This statement must be included in a full interest restriction return where a worldwide group is subject to interest restriction. It allocates the total disallowed amount for the group between UK group companies. Non-consenting companies may not be allocated more than a pro-rata share.

## Statement of Calculations

TIOPA10/SCH7A/PARA21 [CFM98450](#)

The statement of calculations, which must be included in a full interest restriction return, is a statement setting out specified company and group-level amounts that are taken into account in computing a worldwide group's total disallowed amount or its interest reactivation cap, if any.

## Subject to interest reactivations (worldwide group)

TIOPA10/S373(5)

A worldwide group is subject to interest reactivations in a period of account if its interest reactivation cap is not zero and at least one member of the group has previously disallowed tax-interest amounts available for reactivation.

## Subject to interest restriction (worldwide group)

### TIOPA10/S373(1)

A worldwide group is subject to interest restriction in a period of account if its aggregate net tax-interest expense exceeds its interest capacity. The amount of the excess is referred to as the total disallowed amount.

## Tax-EBITDA (of a company)

### TIOPA10/S406-S409 [CFM95700](#)

The tax-EBITDA of a company (which may be a negative amount) is its profits or losses for corporation tax purposes, after excluding:

- tax-interest expense amounts and tax-interest income amounts;
- capital allowances and charges;
- certain debits and credits under the intangible fixed assets code;
- losses brought forward or back from a different accounting period, and group relief to the extent it derives from a fellow worldwide group member; and
- certain specified reliefs, including R&D reliefs, and charitable donations relief.

Tax-EBITDA is further adjusted for certain amounts relating to long funding operating leases and short finance leases, in order to align the tax-EBITDA calculation with that of tax-interest amounts.

## Tax-interest

### TIOPA10/S382-S391 [CFM95600](#)

Tax-interest is income or expense falling within the definition of a tax-interest income amount or tax-interest expense amount of a company. In essence, such items are interest or have a similar economic nature to interest. It is the fundamental subject matter of the Corporate Interest Restriction provisions, for which a corporation tax deduction may be denied, at UK group company level, by the corporate interest restriction provisions. Amounts that are disallowed are subject to possible future reactivation.

Tax-interest is measured by UK tax-rules and is an amount that is taken in to account in computing amounts chargeable to corporation tax.

## **Tax-interest expense amounts (of a company)**

TIOPA10/S382 [CFM95600](#)

Tax-interest expense amounts for a company are sums brought into account for the purposes of corporation tax in the relevant accounting period in respect of interest expense or matters of a similar economic nature, as defined in the legislation. In particular, they can include a relevant loan relationship debit, or a relevant derivative contract debit, or another financing cost implicit in amounts payable under a relevant arrangement (for example, finance leases, debt factoring and service concession arrangements).

## **Tax-interest income amounts (of a company)**

TIOPA10/S385 [CFM95600](#)

Tax-interest income amounts of a company are sums brought into account for the purposes of corporation tax in the relevant accounting period in respect of interest income or matters of a similar economic nature, as defined in the legislation. In particular, they can include a relevant loan relationship credit, or a relevant derivative contract credit, or a financing cost implicit in amounts receivable under a relevant arrangement (for example, finance leases, debt factoring, service concession arrangements).

## **Total disallowed amount (for a worldwide group)**

TIOPA10/S373(2) [CFM95220](#)

This is the overall restriction to a worldwide group's corporation tax deductions for a period of account. This is the excess, if any, of the group's aggregate net tax-interest expense over its interest capacity.

## **UK group company**

TIOPA10/S492

At any point in time, a UK group company is a member of the worldwide group that is within the charge to Corporation Tax. In some contexts, reference is made to a relevant company, which is a UK group company that is a member of worldwide group for at least part of the period of account in question.

## Ultimate parent (of the worldwide group)

TIOPA10/S473(4)(b) [CFM95335](#)

An ultimate parent is a member of an IAS group, which is a relevant entity and which is not a consolidated subsidiary of any other relevant entity.

Note that for the purposes of considering whether an entity is consolidated subsidiary, it is to be assumed that all entities are subject to IAS, regardless of any consolidated financial statements that might be drawn up under other accounting standards (S475(4)). Therefore, it is IAS, rather than the accounting standards actually used that is relevant to defining the group and thence the ultimate parent and membership of a worldwide group.

## Unexpired (interest allowance of a worldwide group)

TIOPA10/S395 [CFM98240](#)

Interest allowance of a worldwide group for a period of account ("the originating period") is unexpired in a later period of account (the "receiving period") if it has not ceased to be available by operation of the five-year rule. For detail, see [CFM98240](#). See also available interest allowance of a worldwide group.

## Used (interest allowance of a worldwide group)

TIOPA10/S394 [CFM98240](#)

The legislation defines when interest allowance is used in either the period of account in which it originates or a later period. It is used by offsetting against aggregate net tax-interest expense of the worldwide group to reduce the total disallowed amount (which may be to zero) or to reactivate previously disallowed tax-interest expense. See also available interest allowance of a worldwide group.

## Worldwide group

TIOPA10/S473 [CFM95320](#)

A worldwide group takes its meaning from international accounting standards (IAS), subject to certain non-consolidation conditions. It is comprised of the ultimate parent and its consolidated subsidiaries. The controlling entity must meet either of the non-consolidation conditions as follows:

- the controlling entity is a member of an IAS group but not a consolidated subsidiary of a relevant entity which itself meets the first condition



- the controlling entity is not a member of an IAS group.

Note also that to be the ultimate parent or a member of the worldwide group, an entity must be a relevant entity. Therefore, the (accounting) parent that actually draws up the financial statements may be an entity that is not a relevant entity and therefore ineligible to be the ultimate parent. Furthermore, the position under IAS must be considered; actual consolidated financial statements drawn up under other GAAP will not determine the composition of the worldwide group if IAS would consolidate different entities.