

Clause 9 and Schedule 5: Corporate Interest Restriction

Summary

1. This clause and Schedule make certain technical amendments to the Corporate Interest Restriction (CIR) rules in Part 10 and Schedule 7A of the Taxation (International and Other Provisions) Act 2010 (TIOPA) to ensure that the regime works as intended.

Details of the clause and Schedule

2. This Clause introduces Schedule 5.

Schedule 5

3. Paragraphs 2, 3 and 4 make amendments to the calculation of the group-interest figures in respect of capitalised interest (and other capitalised amounts) to ensure that these provisions work as intended.
4. Paragraph 2 introduces new subsection 410(5A) to complement sections 410(3) and 410(5). In particular, this clarifies that nothing is to be included in net group-interest expense (NGIE) in respect of interest and other amounts capitalised in a relevant asset.
5. Paragraph 3 amends section 413 which sets out the calculation of adjusted net-group interest expense (ANGIE). This confirms that the adjustments being made under sections 413(3)(a), 413(3)(b), 413(4)(a) and 413(4)(b) are limited to non-financial assets and non-financial liabilities.

In particular, no adjustments are made in respect of arrangement fees and other similar amounts simply because they are included in the carrying value of the financial asset or liability in question under an amortised cost basis of accounting. In these circumstances, the calculation of ANGIE will follow the amounts of financing costs recognised in profit or loss.

6. Paragraph 4 amends section 423 which sets out an alternative calculation of ANGIE where the group has made an interest allowance (alternative calculation) election. In particular, this ensures where a GAAP-taxable asset is also a relevant asset (for example, as with intangible fixed assets), the calculation of ANGIE includes (by way of an upward or downward adjustment) the amount of any amortisation or write off of relevant amounts previously capitalised in the asset.
7. Paragraph 5 ensures that, when calculating ANGIE, an upwards adjustment should

be made under subsection 413(3) for any release credit which would be prevented from being brought into account for tax by section 358 of Corporation Taxes Act (CTA) 2009. A corresponding amendment is made to subsection 413(4) to ensure that a downwards adjustment should be made for any release debit which would be prevented from being brought into account for tax by section 354 of CTA 2009.

Typically sections 354 and 358 CTA 2009 apply in relation to intra-groups which do not affect the calculation of ANGIE for the worldwide group. However, this amendment aligns the calculation of ANGIE with the UK tax rules in circumstances where there is a release of a connected company loan and the counterparty is not a member of the worldwide group.

8. Paragraph 6 provides for an additional adjustment to be made to the calculation of group-EBITDA where a group has made an interest allowance (alternative calculation) election. Where such an election is made, new section 424A will exclude amounts from the group's "profit before tax" figure that represent employees' remuneration which remain unpaid nine months after the end of the period of account. Instead, such amounts are included in the group's profit before tax in the period in which the amount is actually paid. This aligns the calculation of group-EBITDA more closely with the UK tax rules.
9. Paragraph 7 clarifies how ANGIE and qualifying net group-interest expense (QNGIE) are calculated in cases where an interest allowance (non-consolidated) election is made. Where additional amounts of ANGIE and QNGIE are to be included as a result of this election, these affect the calculation at section 413(1) and section 414(1) respectively. As a result, they are included in the calculations before the application of section 413(2) and section 414(2) respectively, which provide that neither ANGIE nor QNGIE can be negative.
10. Paragraph 8 amends the public infrastructure assets test at section 433(5) so that pension fund assets and deferred tax assets are included as a class of assets that would not cause the assets test to be failed.
11. Paragraph 9 amends the public infrastructure rules for the grandfathering of existing debt at section 439. This ensures that where a company is reimbursed certain expenses under a qualifying contract, this income is ignored as qualifying infrastructure receipts. As a result, such income will not prevent the company's future qualifying infrastructure receipts from being highly predictable.
12. Paragraph 10 makes some changes section 452 which concerns how the CIR rules apply to Real Estate Investment Trusts ("REITs").
13. Paragraph 10(2) provides clarification that section 599 is disapplied in determining the amounts of a REIT that should be included in the CIR calculations. It therefore follows that any interest or other financing amounts in the REIT property business profits are treated as if they are brought into account under Part 5 of Corporation Tax Act 2009 and are therefore subject to the CIR rules. This is notwithstanding that the interest or other financing cost may be treated as being brought into account under Part 4 (and not under Part 5 of Corporation Tax 2009) as a result of the application of

section 599 Corporation Tax 2010 for the purposes of the calculating the profits of the property business.

14. Paragraph 10(3) inserts new subsection 452(4A) to deal with cases where section 543 CTA 2010 imposes a charge to Corporation Tax as a result of the REIT's interest cover ratio falling below 1.25. The new subsection provides that where an amount is charged to Corporation Tax under section 543 CTA 2010, this to be treated as a tax-interest income amount for the purposes of the CIR rules. This ensures that the REIT does not suffer, in effect, a double restriction as a result of having high levels of gearing in that particular period.
15. Paragraph 10(4) provides clarification that any interest restriction allocated to the REIT property business profits has effect for the purpose of calculating the amount that is required to be distributed by the REIT under section 530 CTA 2010. This is notwithstanding that the interest or other financing cost may be treated as being brought into account under Part 4 and not under Part 5 of Corporation Tax 2009 as a result of the application of section 599 Corporation Tax 2010.
16. Paragraphs 11, 12 and 13 make amendments to the administrative rules in Schedule 7A of TIOPA.
17. Paragraph 11 permits a longer time for appointing or revoking the appointment of a reporting company, the company responsible for filing interest restriction returns and dealing with other administrative matters on behalf of worldwide group. A valid appointment or revocation has effect for a worldwide group period of account, so long as made within 12 months of the end of the period of account (rather than the previous six months). This allows a group to appoint a reporting company shortly before the time limit for filing the return. Once made, an appointment rolls over to future periods unless it is revoked or otherwise becomes ineffective.
18. Paragraph 12 makes consequential a change to the filing date for an interest restriction return. This ensures that where a group appoints a reporting company more than nine months after the end of a period of account (as will now be permitted as a result of the change made at paragraph 11), this does not extend the time limit for filing an interest restriction return.
19. Paragraph 13 permits HMRC to specify additional information to be included within an interest restriction return in addition to those listed in paragraph 20 of Schedule 7A.
20. Paragraphs 14 to 16 set out certain consequential amendments as a result of the above changes.
21. Paragraphs 17 to 19 set out the commencement of these amendments.

Background note

22. The CIR rules restrict the ability of large businesses to reduce their taxable profits through excessive UK interest expense. They are part of the government's policy to align the location of taxable profits with the location of economic activity, and are consistent with the UK's more territorial approach to corporate taxation.
23. The OECD published recommendations on preventing base erosion through the use of interest expense in October 2015 under Action 4 of the Base Erosion and Profit Shifting (BEPS) Project. The government undertook an initial consultation on how the OECD recommendations could be implemented domestically from 22 October 2015 to 14 January 2016.
24. At Budget 2016 the government announced that it would introduce new rules to limit the tax deductibility of corporate interest expense consistent with the OECD recommendations, effective from 1 April 2017.
25. The CIR rules were enacted in Finance (No.2) Act 2017, and were subject to minor amendments in Finance Act 2018.
26. As a result of further engagement with affected businesses, certain technical amendments to the legislation have been identified that are necessary for the regime to work as intended.
27. If you have any questions about this measure, please contact the CIR team on email: interest-restriction.mailbox@hmrc.gsi.gov.uk.

FINANCE BILL

CLAUSE 9

SCHEDULE 5