

**1     Unassessed transfer pricing profits**

Schedule 1 provides—

- (a) for a power of His Majesty’s Revenue and Customs to assess “unassessed transfer pricing profits”,
- (b) for those profits to be subject to a higher rate of corporation tax (rather than the main or any other rate), and
- (c) for the abolition of diverted profits tax (which is superseded).

## SCHEDULE 1

section 1

## UNASSESSED TRANSFER PRICING PROFITS

*Assessment of transfer pricing profits that should have been included in a return*

- 1 (1) In TIOPA 2010, after Part 4 insert—

**“PART 4A**

## ASSESSMENT OF UNASSESSED TRANSFER PRICING PROFITS

**CHAPTER 1**

## UNASSESSED TRANSFER PRICING PROFITS

**217A Introduction**

- (1) Where a company within the charge to corporation tax has unassessed transfer pricing profits for an accounting period, HMRC may assess those profits to corporation tax in accordance with this Part.
- (2) Corporation tax is charged at the UTPP rate on unassessed transfer pricing profits assessed under this Part (instead of at the main rate or any other rate).
- (3) The UTPP rate in relation to profits assessed under this Part means the sum of—
  - (a) the underlying corporation tax amount expressed as a percentage of the profits to which the unassessed transfer pricing profits relate, and
  - (b) 6%.
- (4) In this Part—
  - (a) “the underlying corporation tax amount” means the amount of corporation tax that would be charged on the profits to which the unassessed transfer pricing profits relate, if those profits were assessed to corporation tax otherwise than under this Part;
  - (b) “the profits to which the unassessed transfer pricing profits relate” means the profits that—
    - (i) are not reflected in the company’s self-assessment, and
    - (ii) are required, as a result of the transfer pricing requirement, to be brought into account in calculating the company’s profits or loss for the period for corporation tax purposes.

- (5) For the purposes of subsection (4) “corporation tax” includes any amount chargeable as if it were corporation tax or treated as if it were corporation tax.
- (6) Section 217B sets out when a company has unassessed transfer pricing profits and what the amount of those profits are.
- (7) Chapter 2 sets out the conditions for a company to be assessed under this Part.
- (8) Chapter 3 sets out the process to be followed in making an assessment.
- (9) Chapter 4 contains minor definitions.

### **217B Unassessed transfer pricing profits**

- (1) For the purposes of this Part, a company has unassessed transfer pricing profits for an accounting period if—
  - (a) the company has made a self-assessment for the period,
  - (b) provision has been made or imposed as between the company and another person (referred to in this Part as “the other party”) by means of a transaction or series of transactions,
  - (c) the profits of the company for the period are subject to a transfer pricing requirement in relation to that provision,
  - (d) the effect of an assessment of the company’s profits not reflecting, or not wholly reflecting, the transfer pricing requirement would be—
    - (i) that a smaller amount (which may be nil) would be taken for corporation tax purposes to be the amount of the company’s profits for the period, or
    - (ii) that a larger amount (or, if there would not otherwise have been a loss, any amount of more than nil) would be taken for corporation tax purposes to be the amount of the loss of the company for the period, and
  - (e) the transfer pricing requirement was not reflected, or is not wholly reflected, in the company’s self-assessment.
- (2) The amount of the unassessed transfer pricing profits for an accounting period is the difference between—
  - (a) the amount of the profit or loss of the company for the period as reflected in its self-assessment, and
  - (b) the amount of the company’s profit or loss for the period as would be reflected in a self- assessment that took account of the transfer pricing requirement.
- (3) The profits of a company are subject to a transfer pricing requirement in relation to the provision if—

- (a) the company's profits and losses are required to be calculated under Part 4 as if the arm's length provision (within the meaning of that Part) had been made or imposed instead of the provision, or
  - (b) an adjustment to the company's profits that relates to the provision is required under any other enactment where, had that adjustment not been made, paragraph (a) would have applied in relation to the provision.
- (4) In this Part "self-assessment" means a self-assessment under paragraph 7 of Schedule 18 to FA 1998 (and where that assessment has been amended, reference to the self-assessment is to that assessment as amended).

## CHAPTER 2

### CONDITIONS FOR BEING ASSESSED

#### **217C Conditions for being assessed under this Part**

- (1) Unassessed transfer pricing profits of a company may be assessed under this Part only to the extent—
  - (a) the provision to which the profits relate has an effective tax mismatch outcome for the accounting period to which the profits relate,
  - (b) the tax design condition is met, and
  - (c) the unassessed transfer pricing profits do not arise wholly from excepted loan relationship arrangements.
- (2) In this section "excepted loan relationship arrangements" means—
  - (a) any arrangements that would produce debits or credits under Part 5 of CTA 2009 (loan relationships and deemed loan relationships) ("a loan relationship"), or
  - (b) a loan relationship and a relevant contract (within the meaning of Part 7 of that Act (derivative contracts)) taken together, where the relevant contract is entered into entirely as a hedge of risk in connection with the loan relationship.

#### **217D Effective tax mismatch outcome**

- (1) Provision between the company and the other party has an effective tax mismatch outcome for an accounting period if the corresponding amount is less than 80% of the underlying corporation tax amount.
- (2) "The corresponding amount" means the amount (which may be nil) of relevant tax—
  - (a) that is due and payable by the other party and that—
    - (i) where it has been paid, has not been refunded and would not be refunded if all reasonable steps were taken to secure that it was refunded;

- (ii) otherwise, would remain due and payable if all reasonable steps were taken to minimise the amount, and
  - (b) charged on profits that correspond to the profits to which the unassessed transfer pricing profits relate.
- (3) The steps mentioned in subsection (2)(a) include –
  - (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
  - (b) making elections for the purposes of the relevant tax.
- (4) For the purposes of subsection (2) –
  - (a) an amount of relevant tax is refunded if and to the extent that –
    - (i) any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
    - (ii) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax paid by the other party;
  - (b) any withholding tax which is due and payable on payments made to the other party is (unless it is refunded within the meaning of paragraph (a)) to be treated as tax which is due and payable by the other party (and not the person making the payment).
- (5) Where the other party is a transparent entity, provision between the company and the other party is to be treated as having an effective tax mismatch outcome for an accounting period unless HMRC is satisfied that it does not have such an outcome for the accounting period.
- (6) For the purposes of this section, the other party is a “transparent entity” if, for the purposes of relevant tax charged under the law of the territory in which the other party is legally constituted, profits that correspond to the profits to which the unassessed transfer pricing profits relate are treated as the income or profits of a person or persons other than the other party.
- (7) Where the other party is a transparent entity –
  - (a) references in this section to relevant tax that is due and payable or paid by the other party include a reference to relevant tax that is due and payable or paid by any person as a result of profits which correspond to the profits to which the unassessed transfer pricing profits relate being treated for the purposes of relevant tax charged under the law of any territory as the income or profits of that person;
  - (b) subsection (4)(b) applies to any such persons as it applies to the other party.
- (8) In this section “relevant tax” means –

- (a) income tax,
- (b) corporation tax on income,
- (c) any amount chargeable as if it were corporation tax or treated as if it were corporation tax (other than the CFC charge within the meaning of Part 9A of this Act), or
- (d) any foreign tax.

**217E Tax design condition**

- (1) The tax design condition is met if it is reasonable to assume that the structure of—
  - (a) the provision to which the unassessed transfer pricing profits relate, or
  - (b) arrangements of which the provision forms part,is designed to have the effect of reducing, eliminating or delaying the liability of any person to pay any tax (including any foreign tax).
- (2) In subsection (1) “arrangements” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

**CHAPTER 3****ASSESSMENT****217F Preliminary notices**

- (1) A designated officer may issue a preliminary notice to a company if they consider that the company has unassessed transfer pricing profits.
- (2) A preliminary notice must —
  - (a) state the accounting period to which the unassessed transfer pricing profits relate;
  - (b) set out the officer’s best judgement of the amount of unassessed transfer pricing profits;
  - (c) set out the basis on which the officer considers that the conditions mentioned in section 217C(1) are met.
- (3) A preliminary notice may not be issued in respect of an accounting period more than 4 years after the end of that period.

**217G Representations by the company**

- (1) Where a preliminary notice is issued to a company, the company may make representations to a designated officer in accordance with this section.
- (2) Representations are only made in accordance with this section if—

- (a) they are made in writing,
  - (b) they are made within 30 days of the officer issuing the preliminary notice, and
  - (c) they are made solely on the grounds specified in subsection (3).
- (3) Those grounds are—
  - (a) that there is an arithmetical error in the calculation of the unassessed transfer pricing profits stated in the preliminary notice or an error in a figure on which an assumption in the notice is based;
  - (b) that one or both of the conditions in section 217C(1)(a) and (c) are not met.
- (4) But where the other party is a transparent entity within the meaning of section 217D, representations are also made in accordance with this section if they are—
  - (a) made within 60 days of the officer issuing the preliminary notice, and
  - (b) made solely on the grounds that the condition in section 217C(1)(a) is not met.

#### **217H Assessment**

- (1) This section applies where—
  - (a) a designated officer has issued a preliminary notice to a company under section 217F in relation to the company's unassessed transfer pricing profits for an accounting period, and
  - (b) a designated officer has considered any representations made by the company in accordance with section 217G.
- (2) A designated officer may assess the company's unassessed transfer pricing profits for the period to corporation tax.
- (3) But where an officer of HMRC is required by a direction under paragraph 33 of Schedule 18 to FA 1998 to give a relevant closure notice, an assessment under this section may not be made before the relevant closure notice is given.
- (4) An assessment under this section must be made before—
  - (a) the end of the period of 60 days beginning with the day on which the preliminary notice to which it relates was issued (but nothing in this subsection prevents a further preliminary notice being issued);
  - (b) if later—
    - (i) in a case where a relevant closure notice required to be given by a direction under paragraph 33 of Schedule 18 to FA 1998 has been given, the end of

the period of 30 days beginning with the day on which the closure notice was given;

- (ii) in a case where the other party is a transparent entity within the meaning of section 217D and representations are made in accordance with section 217G, the end of the period of 30 days beginning with the day on which the representations were made.

- (5) In this section a “relevant closure notice” means a partial or final closure notice in relation to an enquiry into the company tax return for the accounting period mentioned in subsection (1)(a).

#### **217I Amendment of company tax return by company**

- (1) This section applies where a designated officer assesses a company’s unassessed transfer pricing profits for an accounting period under section 217H.
- (2) At any time during the period for amendments (except the last 21 days of that period), the company may amend its company tax return for the accounting period so that its self-assessment more fully reflects the transfer pricing requirement to which the unassessed transfer pricing profits relate.
- (3) In this Part “the period for amendments” means the period of 15 months beginning with the day after the day on which the designated officer assesses the company’s unassessed transfer pricing profits under section 217H.
- (4) If, before the end of the period of 15 months referred to in subsection (3), a designated officer and the company agree (in writing) that the period for amendments is to terminate, the period ends when that agreement is made.
- (5) Paragraph 31(3) of Schedule 18 to FA 1998 (amendment not to take effect during enquiry) does not apply in relation to an amendment made under subsection (2).

#### **217J Amendment of assessment by HMRC**

- (1) This section applies where a designated officer assesses a company’s unassessed transfer pricing profits for an accounting period under section 217H.
- (2) If at any time during the period for amendments a designated officer is satisfied that the total corporation tax charged on the company’s unassessed transfer pricing profits for the period is excessive, the designated officer must amend or withdraw the assessment accordingly.



- (3) If at any time (whether or not during the period for amendments) a designated officer is satisfied that one or more of the conditions mentioned in section 217C(1) do not apply in respect of unassessed transfer pricing profits so assessed, the designated officer must –
  - (a) withdraw the assessment, or
  - (b) amend the assessment to assess the underlying corporation tax amount (instead of assessing the unassessed transfer pricing profits under this Part).
- (4) Where an assessment is amended under subsection (2) or (3) any tax overpaid must be repaid.
- (5) If a designated officer is satisfied at any time during the period for amendments (except the last 30 days of that period) that the total corporation tax charged on the company's unassessed transfer pricing profits for the period is insufficient, the designated officer may amend the assessment accordingly.

**217K No postponement except before assessment is finalised for tax on same profits**

- (1) This section applies where –
  - (a) a designated officer has assessed a company's unassessed transfer pricing profits for an accounting period under section 217H or section 217J(5), and
  - (b) the amount of paid relevant tax is greater than nil.
- (2) The company may –
  - (a) first apply by notice in writing to HMRC for a determination of the amount of the corporation tax charged on the unassessed transfer pricing profits the payment of which is to be postponed until the assessment is finalised (see subsection (3));
  - (b) where such a determination is not agreed, refer the application for a determination to the tribunal within 30 days from the date of the document notifying the company of HMRC's determination.
- (3) For the purposes of this section –
  - (a) the amount of corporation tax charged on the unassessed transfer pricing profits the payment of which is to be postponed until the assessment is finalised is an amount equal to the amount of paid relevant tax, and
  - (b) the assessment is finalised when –
    - (i) the period of 30 days mentioned in section 217M(2) ends without notice of an appeal to the tribunal against the assessment being given,
    - (ii) an appeal against the assessment is finally determined otherwise than by the assessment being cancelled, or

- (iii) an appeal against the assessment is withdrawn.
- (4) An application under subsection (2)(a) –
  - (a) must be made within the period of 30 days beginning with the day after –
    - (i) the day on which the unassessed transfer pricing profits are assessed under section 217H or section 217J(5), or
    - (ii) if later, any day on which the amount of paid relevant tax ceases to be nil, and
  - (b) state the amount of paid relevant tax and include documentary evidence of that amount.
- (5) If, after any determination of the amount of corporation tax the payment of which should be so postponed –
  - (a) the company or HMRC has grounds for believing that the amount so determined has become excessive or insufficient, and
  - (b) the parties cannot agree on a revised determination, the party mentioned in paragraph (a) may, at any time before the assessment is finalised, apply to the tribunal for a revised determination of that amount.
- (6) Any application to the tribunal under subsection (2)(b) or subsection (5) is subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
- (7) If the company and HMRC reach an agreement as to the amount of corporation tax the payment of which should be postponed until the assessment is finalised, the agreement shall not have effect unless –
  - (a) the agreement is in writing, or
  - (b) the fact that the agreement has been reached, and the terms of the agreement, are confirmed by notice in writing given –
    - (i) by the company to HMRC, or
    - (ii) by HMRC to the company.
- (8) The payment of corporation tax charged on the unassessed transfer pricing profits –
  - (a) may not be postponed other than in accordance with this section, and
  - (b) accordingly, any amount of the corporation tax that is not postponed in accordance with this section or ceases to be postponed in accordance with this section is due and payable in accordance with section 59D of TMA 1970 or regulations made under section 59E of that Act.
- (9) In this section –
  - (a) “appeal” means any appeal under the Taxes Acts;

- (b) “paid relevant tax” means relevant tax within the meaning of section 217D(8) –
    - (i) charged on profits that correspond to the profits to which the unassessed transfer pricing profits relate, and
    - (ii) that has been paid by the other party and not refunded within the meaning of section 217D(4);
  - (c) “tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;
  - (d) references to agreements between a company and HMRC, and to the giving of notices between the parties, include references to agreements, and the giving of notices, between a person acting on behalf of the company and HMRC.
- (10) For the purposes of subsection (9)(b) –
  - (a) any withholding tax which has been paid on payments made to the other party is (unless it is refunded within the meaning of section 217D(4)) to be treated as tax which has been paid by the other party (and not by the person making the payment),
  - (b) where the other party is a transparent entity within the meaning of section 217D(6) –
    - (i) the reference to relevant tax that has been paid by the other party includes a reference to relevant tax that has been paid by any person as a result of profits that correspond to the profits to which the unassessed transfer pricing profits relate being treated for the purposes of relevant tax charged under the law of any territory as the income or profits of that person; and
    - (ii) paragraph (a) applies to any such persons as it applies to the other party.

#### **217L Closure notices: rules relating to period for amendments**

- (1) This section applies where a designated officer assesses a company’s unassessed transfer pricing profits for an accounting period under section 217H.
- (2) A relevant closure notice may not be issued under paragraph 32 of Schedule 18 to FA 1998 at any time before the end of the period for amendments.
- (3) Accordingly, a tribunal direction given under paragraph 33 of Schedule 18 to FA 1998 in relation to a relevant closure notice has no effect until the period for amendments has ended.
- (4) A relevant closure notice issued after the end of the period for amendments may not include the profits to which the unassessed transfer pricing profits relate.

- (5) In this section a “relevant closure notice” means a partial or final closure notice in relation to an enquiry into the company tax return for the accounting period mentioned in subsection (1).

#### **217M Appeal against assessment**

- (1) A company may only appeal against an assessment of its unassessed transfer pricing profits where –
- (a) the company has paid (in full) the corporation tax charged on the profits assessed other than any amount the payment of which has been postponed in accordance with section 217K, and
  - (b) the period for amendments has ended.
- (2) Notice of an appeal must be given within 30 days after the end of the period for amendments (and accordingly paragraph 48(2)(b) of Schedule 18 to FA 1998 does not apply).
- (3) Where on an appeal against an assessment of a company’s unassessed transfer pricing profits the tribunal decides that one or more of the conditions mentioned in section 217C(1) do not apply in respect of unassessed transfer pricing profits so assessed, the tribunal may amend the assessment to assess the underlying corporation tax amount.

#### **217N Review of assessment**

- (1) This section applies if –
- (a) HMRC are required by section 49B or 49C of TMA 1970 to review the assessment of a company’s unassessed transfer pricing profits, and
  - (b) the review finds that one or more of the conditions mentioned in section 217C(1) do not apply in respect of unassessed transfer pricing profits so assessed.
- (2) The reference in section 49E(5) of TMA 1970 (nature of review etc) to the review concluding that HMRC’s view of the matter in question is to be varied is to be read as including a reference to the review concluding that the assessment is to be amended to assesses the underlying corporation tax amount.

#### **217P Settling of appeal by agreement**

Where a company gives notice of appeal against an assessment of its unassessed transfer pricing profits, references in section 54 of TMA 1970 to the assessment being varied are to be read as including a reference to the assessment being amended to assess the underlying corporation tax amount.

### **217Q No repayment**

No claim may be made under section 59DA of TMA 1970 (repayment in advance of liability being established) or regulations under section 59E of that Act for the repayment of any amount of corporation tax charged on unassessed transfer pricing profits assessed under this Part.

### **217R Exclusion of reliefs, deductions and set-offs**

No relief, deduction or set-off of any description is allowed against a company's unassessed transfer pricing profits or corporation tax charged on unassessed transfer pricing profits assessed under this Part.

## **CHAPTER 4**

### **INTERPRETATION**

#### *Interpretation*

### **217S Interpretation**

- (1) In this Part—
- “designated officer” means an officer of Revenue and Customs who has been designated by the Commissioners for His Majesty's Revenue and Customs for the purposes of this Part;
  - “foreign tax” means a tax falling within subsection (2) of section 259B (see also subsections (3) and (3ZA) of that section);
  - “HMRC” means His Majesty's Revenue and Customs.
- (2) References in this Part to a power to assess include any power to otherwise determine amounts of tax that are chargeable or payable by a company (and references to assessment and any other cognate expressions are to be construed accordingly)."
- (2) Part 3 of FA 2015 (diverted profits tax) is repealed.
- (3) In Schedule 11 to TIOPA 2010 (index of defined expressions used in Parts 2 to 8), after Part 2 insert—

## **“PART 2A**

### **UNASSESSED TRANSFER PRICING PROFITS: INDEX OF DEFINED EXPRESSIONS USED IN PART 4A**

the other party (in Part 4A)	section 217B
the period for amendments (in Part 4A)	section 217I(3) and (4)

- |  |                  |
|--|------------------|
| the profits to which the unassessed transfer pricing profits relate (in Part 4A) | section 217A(4)  |
| designated officer (in Part 4A)  | section 217S     |
| HMRC (in Part 4A)  | section 217S     |
| foreign tax (in Part 4A)   | section 217S     |
| self-assessment (in Part 4A)   | section 217B(4)  |
| underlying corporation tax amount (in Part 4A)                                   | section 217A(4)” |
- (4) In section 48 of TMA 1970 (application to appeals and other proceedings), in subsection (2)(b) after “section 55 below” insert “or section 217K of TIOPA 2010”.
- (5) In section 49E of TMA 1970 (nature of review etc), after subsection (5A) insert –
- “(5B) See section 217N of TIOPA 2010 concerning the application of this section in the case of an assessment of a company’s unassessed transfer pricing profits under Part 4A of that Act.”
- (6) The amendments made by this paragraph have effect for accounting periods beginning on or after 1 xx 202X.

### *Consequential amendments*

- 2 In section A1 of CTA 2009, in subsection (2), after paragraph (g) insert –
- “(ga) Part 4A of that Act (assessment of unassessed transfer pricing profits),”
- 3 (1) In section 206(3) of FA 2013 (taxes to which the general anti-abuse rule applies) omit paragraph (da).
- (2) In paragraph 7 of Schedule 6 to FA 2010 (enactments to which definition of “charity” in Part 1 of that Schedule applies) –
- (a) after paragraph (h) insert “and”, and
- (b) omit paragraph (j) (and the “and” before it).
- (3) In Schedule 23 to FA 2011 (data-gathering powers), in paragraph 45(1) (taxes to which powers apply), omit paragraph (ca).
- (4) In section 1139 of CTA 2010 (definition of “tax advantage” for the purposes of provisions of the Corporation Tax Acts which apply this section), in subsection (2) –
- (a) after paragraph (da) insert “or”, and
- (b) omit paragraph (f) (and the “or” before it).
- (5) In Schedule 56 to FA 2009 (penalty for failure to make payments on time) –
- (a) in the Table at the end of paragraph 1, omit the entry relating to diverted profits tax;

- (b) in paragraph 3 (amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more), omit sub-paragraph (1)(aa).
- (6) In Schedule 36 to FA 2008 (information and inspection powers) in paragraph 63(1) (taxes to which powers apply), omit paragraph (ca).
- (7) In Schedule 41 to FA 2008 (penalties: failure to notify etc) –
  - (a) in the Table in paragraph 1, omit the entry relating to diverted profits tax;
  - (b) in paragraph 7 (meaning of “potential lost revenue”), omit sub-paragraph (4A).
- (8) In section 178 of FA 1989 (setting rates of interest), in subsection (2), omit paragraph (v).
- (9) In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting income tax, purchase tax or customs or excise duties), in subsection (1) omit “diverted profits tax,”.