

Finance Bill 2023 - CT measures (Lecture B1374 – 15.07 minutes)

Energy (Oil and Gas) Profits Levy

The Energy Profits Levy (EPL) was introduced in May 2022 to tax profits of oil and gas companies operating in the UK and on the UK Continental Shelf. There was an investment allowance that could be utilised by companies to reduce the profits on which the EPL was charged. At the time of the 2022 Autumn Statement, the rate of the levy was increased to 35% and the investment allowance rate reduced to 29%. These changes took effect from 1 January 2023.

Clause 12 introduces a higher allowance of 80% where expenditure is incurred on de-carbonisation of upstream petroleum production. This is to promote movement toward the Government's net zero target as this will reduce greenhouse gas emissions. It will apply for expenditure on or after 1 January 2023.

Expenditure will be treated as being incurred on decarbonisation of upstream petroleum production if it is incurred in qualifying circumstances and the main purpose (or one of the main purposes) of incurring the costs is to reduce the greenhouse gas emissions of the ring fence trade.

Expenditure is incurred in qualifying circumstances if it is incurred:

- On the provision of alternative energy source for the purposes of generating or storing power in the upstream petroleum facilities (including purchase, transport and installation)
- On modification of an asset so it becomes an alternative energy asset
- On the provision of an asset used to make connections to the electric grid
- For the purposes of reducing or eliminating flaring or venting
- For the purpose of capturing greenhouse gas emissions or
- For the purpose of monitoring or measuring greenhouse gas emissions.

In this context, an alternative energy source is one which generates or stores power from sources of energy other than fossil fuels. Upstream petroleum facilities are any facilities used by the company for the purposes of its oil extraction.

Cultural reliefs

Clause 13 extends the sunset date of museum and galleries exhibition relief from 31 March 2024 to 31 March 2026. Expenditure after this date will no longer qualify for relief.

Clause 14 extends the period for which a higher rate of relief is available for theatre tax credit, orchestra tax credit and museum and galleries exhibition tax credit.

The rate has been at a higher level of 45% (for theatre tax relief and museums and galleries exhibition relief non-touring productions) or 50% (for orchestra tax relief and theatre tax relief and museum and galleries exhibition relief touring productions) since 27 October 2021. It was due to reduce from 1 April 2023 but will not now reduce until 1 April 2025, when it will be at a level of 30% or 35% before reverting back to 20% or 25% from 1 April 2026.

Corporate interest restrictions

Clause 34 introduces Schedule 3 which contains further amendments to the Corporate Interest Restriction provisions. Once again these are badged as changes to clarify the way in which the provisions apply.

The basic provisions operate to restrict the amount of relief available for a company to a proportion of the adjusted net group interest expense or qualifying net group interest expense.

The starting point for each company is calculating the net tax-interest expense of a company which is the excess of the company's tax-interest expense amount over its tax-interest income (or the net tax-interest income if the income exceeds the expense).

Tax interest expense

S382 TIOPA 2010 defines the tax-interest expense of a company being amounts which are relevant loan relationship debits, amounts which are relevant derivative contract debits and amounts in respect of financing costs implicit in amounts payable under relevant arrangements or transactions.

Para.2 Sch.3 amends this section to exclude the finance costs of charities so that they are not brought into account as tax-interest expenses and so are not included in CIR calculations.

Carry forward of interest allowance or excess debt cap

Provisions apply so that groups can carry forward interest allowance or excess debt cap. S395A and s400A TIOPA 2010 provide that groups can carry forward these amounts where a new holding company is inserted in the group by way of a takeover part way through a period of account. Para.3 Sch.3 clarifies the wording of these provisions:

- S395A is amended by clarifying what is meant by the 'first period of account of the new group' (which begins on the day of the takeover) and the 'last period of account of the old group' (being the day before the takeover);
- S400A is amended to change reference to 'the group' to 'the new group' and aligning the definitions with those in s395A as quoted above.

Exclusion of income from tax-EBITDA

Tax-EBITDA is a crucial component of the CIR calculation and s407 TIOPA contains amounts which are excluded from the calculation of this figure. It includes any tax-interest expense amount or tax-interest income amount.

S388 TIOPA 2010 makes an adjustment to 'tax-interest income' which is not subject to tax in the UK due to a credit for foreign tax paid. There is a formula for calculating 'notional untaxed income'. S407 is amended to make it clear that excluded tax-interest income also includes amount that are removed from the calculation of tax-interest income by virtue of s388.

An additional category of excluded amounts is also added to s407 which is income tax losses being brought forward and utilised by non-resident companies who are newly within corporation tax. This is consistent with the treatment of corporation tax losses.

Relevant expense amount and relevant income amount

S411 TIOPA 2010 contains the definition of 'relevant expense amount' in the context of calculation of group interest and, by extension, group-EBITDA. One of the amounts included is currently 'interest payable in respect of relevant non-lending relationships'. Relevant non-lending relationships are defined within the loan relationship provisions starting at s478 CTA 2009. These are where a company is a creditor or debtor in relation to a money debt which has not arisen from the lending of money but interest, foreign exchange gains or losses or impairment losses arise on those debts. An example might be an interest-bearing trade debt.

The legislation s411 is amended to bring in debits relating to relevant non-lending relationships or debits that would be brought in if the company was within charge to corporation tax but excluding exchange losses or impairment losses.

S41 also contains the definition of 'relevant income amount' again in the context of the calculation of group figures. Again it contains a provision to bring in credits relating to interest receivable in respect of relevant non-lending relationships. This is also amended to bring in credits relating to non-lending relationships or credits which would be brought in if the company was within charge to corporation tax but excluding exchange gains or the reversal of impairment losses.

Adjusted net group-interest expense

S413 TIOPA covers the calculation of the adjusted net group-interest expense. This is amended to remove potential mismatches created by non-UK resident property companies coming into the charge to corporation tax.

Firstly, s330ZA CTA 2009 allows a non-UK resident company which has loan relationship debits relating to its UK property business referable to a time before it starts to carry on that business which have not been brought into account for tax purposes to be claimed as a debit in the period in which they start to trade. This is the standard pre-commencement expenditure provisions which apply across UK tax law. Such an adjustment can be added to the adjusted net-group interest expense provided it has not been included in the calculation of this figure for an earlier period of account.

Secondly, s607ZA CTA 2009 allows costs relating to derivative contracts which a non-UK resident company is party to for the purposes of a UK property business which it enters into before the business commences to be brought into account for tax purposes (if they have not previously been accounted for) when the business starts. Again, this adjustment can be added to adjusted net-group interest expense provided it has not been included in the calculation of this figure for an earlier period of account.

Finally, amounts can be added to adjusted net-group interest expense where these amounts represent income in respect of a loan relationship or relevant derivative contract recognised in the financial statement of a group but not brought into account but are expected to be brought into account under s330ZA or s607ZA as explained above. A deduction would be made for expenses in respect of a loan relationship or relevant derivative contract recognised in the financial statement of a group but not brought into account but are expected to be brought into account under s330ZA or s607ZA as explained above.

However, unless the company elects otherwise, these adjustments are not to be made for a period of account of the worldwide group ending on or after 6 April 2020 and beginning before 1 April 2023.

The above provisions relate to pre-commencement expenditure for non-UK resident companies coming into the charge to UK corporation tax.

However, UK companies can also claim deductions for pre-trading expenditure and so equivalent amendments are made to s413 TIOPA 2010 in relation to normal pre-trading debits. These provisions take effect for elections (to bring amounts into account which relate to pre-trading costs) made from Royal Asset.

Qualifying net group-interest expense

S414 TIOPA 2010 explains the calculation of qualifying net group-interest expense. This contains an adjustment for expense expenses relating to equity notes. The intention is to prevent items that have equity features being included in this calculation and possible inflating the group ratio percentage. This is amended to refer to 'relevant equity notes'.

A relevant equity note is then defined as being a noted within s1016 CTA 2010 which categorises an equity as meeting any of the tests below:

- No particular redemption date;
- Redemption date (or latest redemption date) falls after the end of the permitted period;
- Redemption will occur after the end of the permitted period if a particular event occurs and the event is one which is certain or likely to occur; or
- The issuing company can secure that there is no particular by which the security is to be redeemed or that the date for redemption falls after the end of the permitted period.

For the purposes of s1016, the permitted period is 50 years but for CIR purposes, this alteration now sets this at 100 years.

Capitalised interest

The default position for calculating group-interest and group-EBITDA is to follow the amounts recognised in the group's financial statements. When calculating adjusted net group-interest expense, this includes all amounts of interest that are capitalised in the period.

It is possible for the group to elect to use the alternative calculation of the interest allowance so that the calculations more closely align with UK tax rules. From a UK tax perspective, the rules on capitalised interest make a distinction between the nature of the asset or liability in which the amounts are capitalised. Mostly, tax relief is available on capitalised amounts at the time they are capitalised. However, if the asset or liability is taxed in line with the account (called 'GAAP-taxable'), the tax relief follows accounting treatment. This applies, for example, to trading stock and intangible fixed assets. In this case, no adjustment is made to the ANGIE calculation.

S423 TIOPA 2010 is amended to correct an anomaly where GAAP-taxable assets are appropriated from trading stock to fixed assets. If this occurs, the adjustments can again be brought into account in calculating ANGIE.

Non-consolidated investment election

Where a worldwide group has an investment in a non-consolidated entity any interest expense will not normally be included in the net group-interest expense for the group but the group-EBITDA will include the group's share of the entity's profit such that this can deflate the group ratio.

The investing group have the option of making an interest allowance (non-consolidated investment) election. This gives the investing group a share of the non-consolidated associate's net group-interest expense for the purpose of calculating ANGIE and QNGIE.

The meaning of non-consolidated associate is amended in s429 TIOPA 2010. Condition A, B, C or D have to be met. D is a new condition.

Condition A is amended so that instead of stating that 'the entity' is accounted for in the financial statements of the group, it will state that 'the ultimate parent's interest in the entity' is accounted for in the financial statements of the group.

New condition D is that:

- The entity is a partnership or a transparent entity other than a partnership and
- The ultimate parent's interest in the entity is accounted for in the financial statements of the group on the basis of fair value accounting.

An entity is transparent if it is not chargeable to corporation tax or income tax as a person or it is a collective investment vehicle which is transparent for income tax purposes within Schedule 5AAA TCGA 1992.

Public infrastructure

The public infrastructure election is available to exclude companies from the CIR provisions where they meet the relevant conditions. An election has to be made before the end of the relevant accounting period. S435 TIOPA 2010 is amended to align the deadline for making a joint group public infrastructure election with the deadline for individual group companies to make those elections.

The group election must be made before the end of the earliest elected accounting period and may not be made before the first day of the earliest elected accounting period. The 'earliest elected accounting period' is the first elected accounting period for an elected company and must begin no later than the first elected accounting period of each other elected company. For these purposes, the first elected accounting period of first of a company's accounting periods in relation to which the election is to have effect.

S436 TIOPA 2010 contains provisions as to what can be included as qualifying infrastructure activity. This has allowed a building under construction or one being let on a short-term basis to be a public infrastructure asset. The legislation is clarified and a new provision introduced to make it clear that this will not apply if the property is within a trading business, rather than a property investment business.

S438 TIOPA 2010 excludes from the tax-interest expenses of a qualifying infrastructure company any amounts which are defined as 'exempt' which broadly means payments to creditors who are not related parties of the company or where the creditor is itself a qualifying infrastructure company. S438A is inserted into the legislation which will allow payments made to third parties via overseas group companies to be exempted. The intermediate group company has to meet some of the public infrastructure tests.

The explanatory notes give the following example:

New section 438A is designed to operate iteratively to a stack of intermediate non-UK companies. For example, a UK Qualifying Infrastructure Company (QICCo) could borrow from a non-UK MidCo which

borrow from a non-UK TopCo and which in turn borrows from a third party. New section 438A could then, assuming the relevant conditions are met, apply in relation to the loan from TopCo to MidCo (with TopCo being 'C'). New section 438A could then, again assuming the relevant conditions are met, apply in relation to the loan from MidCo to QICCo (with MidCo being 'C').

Partnership and other transparent entities

S447 TIOPA 2010 contains definitions of partnerships for the purposes of these provisions. This is amended in line with the provisions for the non-consolidated entities so that an entity is transparent if it is not chargeable to corporation tax or income tax as a person or it is a collective investment vehicle which is transparent for income tax purposes within Schedule 5AAA TCGA 1992. Previous legislation only made reference to the entity not being chargeable to corporation tax or income tax as a person.

Investments held by investment managers

Investment managers will often invest in various groups alongside third parties through a vehicle which is typically a partnership. The investment will be required to consolidate that vehicle with the entities below it where certain conditions are met. This could give a large single worldwide group encompassing the investment manager and each investment.

This could lead to problems if each investment is independent as the CIR disallowance could be based on financial results of otherwise unconnected businesses.

S454A TIOPA contains provisions which allow these groups to be treated as independent entities and the Finance Bill amends those provisions so that they work as planned where the investment manager is a partnership or other transparent entity.

Determining the worldwide group

S475 TIOPA 2010 gives the definition of consolidated and non-consolidated subsidiary for the purposes of determining the worldwide group.

S475(1) currently states that X is a non-consolidated subsidiary of Y at any time that it is an actual subsidiary and if Y were required to measure its investment in X it would do so using fair value accounting or on the basis that X were an asset held for sale or held for distribution to owners.

The part of this definition after 'fair value accounting' is removed.

Appointment of a reporting company by HMRC

The legislation is amended so that the time limit for HMRC to appoint a reporting company for CIR purposes increases from 36 months to 4 years. This takes effect from Royal Assent.

Revised interest restriction return

Para.8 Sch.7A TIOPA 2010 is amended to make it clear that a group has to submit a revised interest restriction return where any of the figures contained in a previous return have become incorrect.

This has to be submitted within a period of three months beginning with the relevant day or it has no effect with an HMRC officer being able to extend this deadline. The relevant day is:

- the day where the previous figures become incorrect by virtue of a company amending an amount stated in its company tax return, the first day on which that amount can no longer be altered or

- in any other case, the day on which the figures were found to be incorrect.

The penalty provisions are amended to levy a penalty where the revised return is not submitted within the necessary time limit.

Enquiry into interest restriction return

Para.41 Sch.7A is amended to provide that HMRC always has at least 12 months in which to open an enquiry into an interest restriction return or an amended interest restriction return.

Determinations by officers of HMRC

HMRC have a right to issue a determination notice where there is no return made. Para.56 Sch.7A is amended to remove the right to issue a determination notice where there is no reporting company, as this has become obsolete now they have extended the time limit for a reporting company to be appointed by HMRC. A further amendment is made to ensure a group can always displace any determination notice by submitting an interest restriction return. These take effect from Royal Assent.

Consequential claims

Where a determination is made, either because no return has been made or following an enquiry, a group has had an extended period of time to make certain claims such as group relief or capital allowances claims which might otherwise be out of date.

An amendment is made to remove that extended time limit where a determination is made because no return has been received.

Other amendments

Schedule 24 FA2007 is amended so that changes to disallowances or reactivations under the CIR provisions are not taken into account when calculating potentially lost revenue for the purposes of calculating penalties for incorrect returns.

S457 CTA2009 is amended to make it clear that companies that are charities cannot carry forward or surrender as group relief financing costs incurred in respect of tax-exempt activities.

Commencement

Unless otherwise noted above, these provisions take effect for accounting periods that begin on or after 1 April 2023.

Old debt cap rules

There are some provisions made to the administration of the old debt cap rules which applied before the CIR was introduced from 1 April 2017. These are not considered further here due to the very limited application for most clients.

Investment vehicles

UK Property Rich Collective Investment Vehicles

Prior to April 2019, the capital gains of non-resident Collective Investment Vehicles (CIVs) rarely needed to be considered but this changed when the new non-resident capital gains tax rules were introduced. Schedule 5AAA TCGA 1992 contained provisions to address some of the issues which arose from these changes.

In particular, allows two forms of election which move the tax point to the investor so that exempt investors would not be subject to a tax charge as they would be if the CIV was taxable.

One of the conditions for these elections to be valid is the 'Genuine Diversity of Ownership (GDO)' condition. The provisions are amended as required so that where a collective investment vehicle is part of 'multi-vehicle arrangements', the GDO condition can be satisfied by either the CIV in isolation or by the multi-vehicle arrangement as a whole.

Multi-vehicle arrangement is defined as 'arrangements comprising two or more vehicles under which an investor in one of those vehicles would reasonably regard that investment as an investment in the arrangements as a whole rather than exclusively in a particular vehicle'.

Consequential amendments are made to facilitate these changes which take effect from Royal Assent.

Real Estate Investment Trusts (REITs)

In order to qualify as a REIT, various conditions have to be met.

S529 CTA 2010 contains provisions relating to the property rental business of the company. Under current legislation Conditions A and B have to be met which are that there are at least 3 rental properties and no single property represents more than 40% of the total value of the rented property. This legislation is being amended so that as an alternative condition C can be met.

Condition C is that there is a property rental business involving at least one property the value of which exceeds £20m and which is rented or available for rent as a commercial unit.

There are various consequential amendments and the changes have effect from Royal Assent.

When an asset that has been used in the property rental business changes use to the residual business, there is a deemed disposal and reacquisition but is not a chargeable gain or allowable loss.

However, under s556 CTA 2010, if the property is developed and the cost of the development exceeds 30% of the value of the property and the property is sold within three years of completion of the development, the deemed disposal and reacquisition provisions are ignored so the property is treated as disposed of in the course of the residual business. S556 currently states that it is 30% of the fair value of the property at entry into the REIT regime or at acquisition, whichever later.

This is being amended so that it is 30% of the fair value at whichever of the following gives the greatest value:

- on entry into the REIT regime;
- when the property was acquired;
- the beginning of the accounting period in which the development commenced.

The provisions also apply where there is the disposal of a right or interest in a relevant property rich company which has developed property meeting the same basic conditions and the legislation is also amended for those transactions.

These provisions take effect for disposals made on or after 1 April 2023.

Collective investment schemes with Genuine Diversity of Ownership are also relevant in terms of companies qualifying as REITs. The amendment made relating to multi-vehicle arrangements

explained above is also imported into s528ZB CTA 2010 for REIT purposes. This applies from Royal Assent.

Finally, an amendment is made such that where property income distributions are made to a partnership which includes some partners who are entitled to gross payments and some who are not, the company can deduct tax only from the proportion of the payment which relates to the partners who are not entitled to gross payment. A statement must be provided to the partnership showing the amounts deducted in relation to each partner. This takes effect from Royal Assent.

Qualifying Asset Holding Companies

FA2022 included provisions for a new type of investment vehicle which is effectively transparent with the investors being taxed directly on the income arising.

The current Finance Bill contains provisions making amendments to those initial provisions so they operate as originally intended. All these apply from Royal Assent unless otherwise noted.

The first amendment excludes securitisation companies from qualifying as QAHCs. This is defined as a company whose profits are brought into account for corporation tax purposes under Reg. 14 of SI 2006/3296 (the Taxation of Securitisation Companies Regulations). These amendments come into force on 15 March 2023. However, a securitisation company that was a QAHC immediately before that date will continue to qualify as long as it remains a QAHC.

A company will only qualify as a QAHC if it meets the ownership condition which includes a provision that the sum of relevant interests held by persons who are not Category A investors does not exceed 30%. There are anti-fragmentation provisions to stop these rules being manipulated and these are amended to ensure that beneficial entitlements held solely through one or more QAHCs are treated as being held directly by the relevant person.

In determining the relevant interest that a person holds, these provisions refer to s165 and s166 plus s169 – 178 CTA 2010. However, this focusses on identifying the lowest possible interest, whereas the QAHC rules focus on identifying the highest possible interest. The amendment states that where CTA2010 uses the term ‘less than’ it should be read as ‘more than’ when considering its application to QAHCs.

The legislation is amended so that an alternative investment fund which is not a collective investment scheme only because it is a body corporate (such as some limited partnerships) can still meet the qualifying fund definition by virtue of meeting the relevant GDO conditions in the Offshore Funds (Tax) Regulations 2009 (SI 2009/3001). Additionally, where it is necessary to determine whether a fund is close, the rules in Chapter 2 Part 10 CTA 2010 apply where the fund is a company with share capital. All other funds should apply those rules as if they were a company with share capital. This is treated as always having had effect.

The Genuine Diversity of Ownership conditions which apply to QAHCs are amended as outlined above for CIVs and REITs. Where a fund is part of a multi-vehicle arrangement, the GDO condition can be satisfied either by the fund in isolation or by the multi-vehicle arrangements taken as a whole.

QAHCs must meet the investment strategy condition and this currently precludes QAHCs from pursuing a strategy which involves the acquisition of listed securities other than in prescribed situations. This is amended so that the company can make an election treating all relevant equity securities as if they were not listed securities. If this election is in place, dividends or other

distributions received from those equity securities are not exempt from corporation tax under s931A CTA 2009 (dividend exemption).

An amendment is made, treated as always having effect, such that the chargeable gains exemption applies where a QAHC invests in a derivative contract with an underlying subject matter of shares.

Finally, a new provision is introduced so that where a person has a beneficial interest in the profits of a company as a result of a qualifying alternative finance arrangement this will be a relevant interest for the purposes of these provisions. The definition of a qualifying alternative finance arrangement broadly follows the rules in Chapter 6 Part 6 CTA 2009. They will not qualify if they are analogous to normal commercial loans.

Transfer pricing records

These provisions put in place legislation relating to the record keeping requirements for those business who have to comply with Transfer Pricing provisions. This necessitates maintaining a master file and a local file in a specified format. The Government have consulted on these proposals so most of the detail is already known.

There is also to be a Summary Audit Trail (SAT) requirement but this is to be consulted on further before it is introduced.

The actual documentation required for Transfer Pricing purposes is specified in Regulations which have been published in draft form and will be finalised once Royal Assent of this Finance Bill has been received. The Regulations do not go into much detail as they link the information in the master file and the local file to the OECD transfer pricing guidelines.

Clause 37 introduces Schedule 5.

Firstly, this amends Para.21 Sch.18 FA1998 so that 'relevant transfer pricing records' have to be maintained. In general terms, relevant transfer pricing records are anything which are reasonably required to allow consideration of the calculation of profits and losses under the transfer pricing provisions plus supporting documentation. Regulations are to be put in place to specify the exact nature of those records.

The remainder of the changes in the Finance Bill relate to the impact of failures associated with these transfer pricing records.

Where a company has failed to comply with the requirement to keep records this will be presumed to be careless unless it is deliberate or the company satisfies HMRC that they took reasonable care to avoid the situation.

There are then equivalent amendments relating to income tax.

The penalty provisions in Schedule 24 FA2007 are amended to introduce specific rules relating to documents retained for transfer pricing purposes which contain errors leading to an underpayment of tax. Again, the penalties will be tax geared based on behaviour.

The information provisions within Schedule 36 FA2008 are amended. Para.21 specifies that a taxpayer information notice cannot be given if a return has been made (for either income tax or corporation tax purposes) unless one of the relevant conditions are met. A new condition (E) is introduced which is that the information notice is being given for the purposes of obtaining any specified relevant transfer pricing information or documents.

Normally an information notice can only be given for documents that are in the taxpayer's power or possession. The legislation is amended such that this restriction on HMRC's ability to ask for documents does not apply to relevant transfer pricing documents that are not in the taxpayer's power or possession but are in the power or possession of another person in the multinational enterprise of which A is a part. In this context multinational enterprise has the same meaning as within the BEPS regulations.

These provisions apply with effect for accounting periods or tax years beginning on or after 1 April 2023.