STATUTORY INSTRUMENTS

# 2013 No. 2892

# CORPORATION TAX

## The Tax Treatment of Financing Costs and Income (Excluded Schemes) Regulations 2013

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| *Made - - - -* | *11th November 2013* |
| *Laid before the House of Commons* | *13th November 2013* |
| *Coming into force - -* | *4th December 2013* |

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 312(2) and (3) of the Taxation (International and Other Provisions) Act 2010(**a**).

*Introductory provisions*

**Citation, commencement, effect and interpretation**

**1.**—(1) These Regulations may be cited as the Tax Treatment of Financing Costs and Income (Excluded Schemes) Regulations 2013 and come into force on 4th December 2013.

(2) These Regulations have effect in relation to schemes entered into on or after that date.

(3) In these Regulations—

"finance arrangement" has the meaning given by section 328 of TIOPA;

"group treasury company" has the same meaning as in section 316(2) of TIOPA(**b**);

"relevant liability" shall be construed in accordance with section 263(3) of TIOPA(**c**);

"TIOPA" means the Taxation (International and Other Provisions) Act 2010.

*Excluded schemes in relation to a large group*

**Excluded schemes for the purposes of the application of Part 7 of TIOPA to a large group**

**2.**—(1) A scheme is an excluded scheme for the purposes of section 305A of TIOPA (schemes preventing Part 7 applying to a large group)(**d**) if it is a relevant event as a result of which subsection (2) of section 348A (financial statements: business combinations to which the worldwide group is a party)(**e**) of TIOPA applies.

But this is subject to regulation 12.

(2) In paragraph (1), "relevant event" has the same meaning as in section 348A of TIOPA.

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(**a**) 2010 c. 8.
(**b**) Section 316(2) was substituted by section 44 of the Finance Act 2013 (c. 29).
(**c**) Section 263(3) was substituted by paragraph 4 of Schedule 5 to the Finance (No 3) Act 2010 (c. 33).
(**d**) Section 305A was inserted by paragraph 8 of Schedule 5 to the Finance Act 2012 (c. 14).
(**e**) Section 348A was inserted by paragraph 18 of Schedule 5 to the Finance Act 2012.

*Excluded schemes for the purposes of the gateway test*

**Excluded schemes for the purposes of the application Chapter 2 of Part 7 of TIOPA**

**3.** A scheme of a description within any of regulations 4 to 5 is an excluded scheme for the purposes of section 306 of TIOPA (schemes involving the manipulation of rules in Chapter 2).

But this is subject to regulation 12.

**Repayment of relevant liability**

**4.** A scheme is within this regulation if it is a transaction for the repayment of a relevant liability by a relevant group company or group securitisation company using—

(a) funds derived directly from the company's trading or investment activity,

(b) proceeds from the repayment of a relevant asset of the company within section 263(4)(b) or (d) of TIOPA(**a**),

(c) proceeds from the issue of ordinary shares or preference shares in the company, or

(d) where the relevant liability is owed to a subsidiary of the company (or a subsidiary of that subsidiary), dividend income received from that subsidiary.

**Release of relevant liability**

**5.** A scheme is within this regulation if it is a transaction for the release of a relevant group company or group securitisation company from a relevant liability on terms which would have been entered into between knowledgeable and willing parties dealing at arm's length.

*Excluded Schemes for the purposes of the main rules*

**Excluded Schemes for the purposes of the application Chapters 3 and 4 of Part 7 of TIOPA**

**6.** A scheme of a description within any of regulations 7 to 11 is an excluded scheme for the purposes of section 307 of TIOPA (schemes involving the manipulation of rules in Chapters 3 and 4).

But this is subject to regulation 12.

**Repayment of finance arrangement**

**7.** A scheme is within this regulation if it is a transaction—

(a) for the repayment of a finance arrangement by a relevant group company using—

(i) funds derived directly from the company's trading or investment activity,

(ii) proceeds from the repayment of a finance arrangement which gives rise to a financing income amount,

(iii) proceeds from the issue of ordinary shares or preference shares in the company, or

(iv) where the relevant liability is owed to a subsidiary of the company (or a subsidiary of that subsidiary), dividend income received from that subsidiary, and

(b) which gives rise to a financing expense amount.

**Release from finance arrangement**

**8.** A scheme is within this regulation if it is a transaction—

(**a**) Section 263(4) was substituted by paragraph 4 of Schedule 5 to the Finance (No 3) Act 2010.

(a) for the release of a relevant group company from a finance arrangement on terms which would have been entered into between knowledgeable and willing parties dealing at arm's length, and

(b) which gives rise to a financing expense amount.

**Transfer to group treasury company**

**9.** A scheme is within this regulation if it is a transaction—

(a) for the transfer of a finance arrangement from a relevant group company to a group treasury company which is a relevant group company, and

(b) which gives rise to a financing expense amount.

**Liability owed to UK group treasury company**

**10.** A scheme is within this regulation if it comprises—

(a) a transaction for the repayment of a finance arrangement by a relevant group company, and

(b) a transaction for the replacement of that arrangement by an equivalent finance arrangement owed to a group treasury company which is a relevant group company.

**Transfer to companies with net financing deduction or net financing income that is small**

**11.**—(1) A scheme is within this regulation if—

(a) under or in relation to the scheme, a finance arrangement is transferred to a relevant group company or a UK group company, and

(b) before the transfer the net financing deduction of the relevant group company, or the net financing income of the UK group company, is small and as a result of the transfer the net financing deduction or net financing income is not small.

(2) In paragraph (1)(b), "small" has the same meaning as in section 331(1) of TIOPA

*Tax Avoidance*

**Tax avoidance schemes**

**12.**—(1) A scheme is not an excluded scheme if the scheme is, or forms part of, a notifiable arrangement, or involves a notifiable proposal, in relation to which a member of the worldwide group is under a duty to provide HMRC with information under Part 7 of the Finance Act 2004(**a**) (disclosure of tax avoidance schemes).

(2) In paragraph (1), "notifiable arrangement" and "notifiable proposal" have the meanings given by section 306 of the Finance Act 2004;

*Nick Lodge*
*Jim Harra*

11th November 2013 Two of the Commissioners for Her Majesty's Revenue and Customs

(**a**) 2004 c. 12.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 7 of the Taxation (International and Other Provisions) Act 2010 ("TIOPA") makes provisions relating to the treatment of certain financing costs and financing expenses of companies that are members of a group for the purposes of corporation tax. Chapter 6 of that Part makes anti-avoidance provisions in relation to schemes which manipulate those provisions, these Regulations specify certain types of scheme ("excluded schemes") which are excluded from those anti-avoidance provisions.

Regulation 1 provides for citation, commencement and effect and defines terms used in the Regulations.

Regulation 2 specifies a scheme which is a relevant event within section 348A of TIOPA (financial statements: business combinations to which the worldwide group is a party) as an excluded scheme for the purposes of section 305A of TIOPA (schemes preventing this Part applying to a large group).

Regulations 3 to 5 specify excluded schemes for the purposes of section 306 of TIOPA (schemes involving the manipulation of rules in Chapter 2). Regulation 3 introduces the provisions. Regulation 4 makes provision in relation to the repayment of a relevant liability by a relevant group company or group securitisation company. Regulation 5 makes provision in relation to the release from a relevant liability.

Regulations 6 to 11 specify excluded schemes for the purposes of section 307 of TIOPA (schemes involving the manipulation of rules in Chapters 3 and 4). Regulation 6 introduces the provisions. Regulation 7 makes provision in relation to the repayment of a finance arrangement by a relevant group company or group securitisation company. Regulation 8 makes provision in relation to the release from a finance arrangement. Regulation 9 makes provision in relation to the transfer of a finance arrangement to a group treasury company. Regulation 10 makes provision in relation to the replacement of a finance arrangement with an arrangement owed to a group treasury company. Regulation 11 makes provision in relation to the transfer of a finance arrangement where a company has a net financing deduction or net financing income that is small.

Regulation 12 is an anti-avoidance provision.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

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