CHAPTER 4
INTERNATIONAL MOVEMENT OF CAPITAL

This chapter examines the tax rules relating to the reporting requirements when a company enters into certain transactions including:

- reporting requirements;
- reportable transactions;
- excluded transactions;
- information to be provided;
- penalties.

4.1 Introduction

The reporting requirements in relation to international movements of capital now require post transaction reporting of certain transactions.

In outline, the rules require a UK “reporting body” to report large transactions / events (defined as those of a value exceeding £100 million) to HMRC where they fall within any of the “reportable” classes and are not specifically excluded. Such reports must generally be made within six months of the transaction / event.

4.2 Reporting Requirements

The UK parent of an international group has to report certain transactions to HMRC within 6 months of them taking place. If a group is structured as, for example, two or more parallel sub-groups controlled by a foreign parent, then the UK resident parents of each sub-group will be reporting bodies in respect of their subsidiaries unless between them they nominate a single reporting body. FA 2009, Sch 17 Para 5-7; SI 2009/2192, Reg 6

In looking at the reporting requirements, ‘control’ in relation to a body corporate means the power of a person to secure that the affairs of the body corporate are conducted in accordance with that person's wishes, whether this is achieved by:

FA 2009, Sch 17 Para 12

- the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- any powers conferred by the articles of association or other document regulating that or any other body corporate.

Where two or more persons taken together have this power then they shall be taken to control the body corporate.

‘Control’ in relation to a partnership means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership.

4.3 Reportable Transactions

Basically a reportable transaction is one where the value exceeds £100 million. Transactions/events that form part of a series are aggregated. FA 2009, Sch 17 Para 8; SI 2009/2192, Reg 4
The following categories of events are reportable:

- an issue of shares or debentures by a foreign subsidiary;
- a transfer by the reporting body, or a transfer caused or permitted by the reporting body, of shares or debentures of a foreign subsidiary in which the reporting body has an interest; or
- any situation which results in a foreign subsidiary becoming, or ceasing to be, a controlling partner in a partnership. \textit{FA 2009, Sch 17 Para 8(2)}

### 4.4 Excluded Transactions

In addition to the £100 million limit there are exclusions for transactions carried out in the ordinary course of a trade or between residents in the same territory or the giving of any security by a foreign subsidiary to a financial institution. \textit{FA 2009, Sch 17 Para 9}

Regulations have been issued excluding several further transactions/events from the reporting requirements. The exclusions cover: \textit{SI 2009/2192}

i. cash pooling arrangements pre-notified to HMRC where HMRC have given written notice to the parties that transactions entered into under the cash pooling arrangements may prospectively be excluded;

ii. certain issues of shares by the foreign subsidiary;

iii. certain issues of debentures by the foreign subsidiary;

iv. transfers by the reporting body of shares or debentures of the foreign subsidiary, or transfers to the reporting body (or group company) of shares or debentures of a foreign subsidiary in which the reporting body has an interest; and

v. the giving of security by the reporting body (or group company) over shares of a foreign subsidiary in connection with the borrowing of money from an unconnected lender.

You should look at SI 2009/2192 for further detail on the exclusions.

### 4.5 Information to be Provided

The required information as it relates to a foreign subsidiary connected with the event or transaction for the report is as follows: \textit{SI 2009/2192, Reg 3}

A. its name, and

B. the territory from the laws of which it derives its status as a body corporate.

The required information as it relates to an event or transaction is a full description of the event or transaction (and, in the case of a transaction, a full description of all the steps taken in the course of the transaction) and includes in particular:

a. the date on which the event took place or the transaction was carried out;

b. for a transaction, the name of each party to it;
c. the reason for the event or transaction; and

d. an estimate of the effect of the event or transaction on the liability to tax in
the United Kingdom of the reporting body and of any group company.

4.6 Penalties

Failure to comply with the reporting requirement will result in a penalty which will
not exceed £300 for the initial failure with a further additional penalty not
exceeding £60 for each day on which the failure continues after the initial penalty
was imposed. **FA 2009, Sch 17 Para 10; TMA 1970, s.98**