



24 June 2022

Page	Feedback on draft Section 6 of Transfer Pricing TDM (Version circulated 2 June 2022)
2	<p><b>6.3.2 Meaning of chargeable to income tax or corporation tax under Schedule D in respect of the profits or gains or losses arising from that arrangement</b></p> <p>It would be helpful if clarity could be provided in the guidance that a company whose profits from shipping activities are computed under the alternative method provided for by section 697B TCA 1997 tax regime may (where the relevant requirements are met) benefit from the section 835E exclusion where it is an acquirer under an arrangement.</p> <p>This would be achieved by adding the following sentence at the end of the final paragraph of 6.3.1:                      “When applying Paragraph (b)(ii) to an acquirer that is a company whose relevant activities comprise shipping activities in respect of which an election under Section 697D TCA 1997 has effect, it is accepted that its profits as computed under the alternative method provided for by Section 697B TCA 1997 would be profits or gains or losses arising directly or indirectly from relevant activities chargeable to corporation tax under Schedule D for the chargeable period.”</p>
5	<p><b>6.4.3 Qualifying person / Eligible person examples</b></p> <p>It would be helpful to have an example of a loan from a subsidiary to a parent to fund dividends in bona fide circumstances (e.g. where the subsidiary is temporarily in a negative reserves position and is a dividend blocker so it lends up in the meantime to fund the parent company).</p>
5	<p><b>Example 6.4.3.1 – Rental Company leases property to Trading Company</b></p> <p>Example 6.4.3.1 appears to assume some rent is charged as it refers to deduction on one side and pickup on the other without explicitly saying some rent was charged. It would be helpful if the example could explicitly state that rent is charged/paid and to insert a sentence at the end which confirms that exclusion applies whether rent is charged or not, but that it qualifies on different basis in those circumstances.</p>
6	<p><b>Example 6.4.3.2 – Investment Company lends to Trading Company to fund its working capital requirements</b></p> <p>As above in the rental example, it would be helpful to state if nothing was charged/paid, then it should be qualifying as that would give clarity to readers. We recognise that there is an investment company example with a non-resident subsidiary later on that is an IFL which brings out the point there that IFLs can qualify, but it would be helpful to have no consideration examples in trader situations too for clarity.</p>
8	<p><b>Example 6.4.3.3 – Investment Company on-lends to Holding Company to acquire shares in Trading Company</b></p>

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	The example assumes a dividend is actually paid/received. Similar to above, it would be helpful if the example could state at the end that it would be the same outcome if no dividend received/paid but that it would qualify on a different basis.
9	<p><b>Example 6.4.3.3 – Investment Company on-lends to Holding Company to acquire shares in Trading Company</b>  <b><i>Application of the exclusion</i></b></p> <p>It would be helpful perhaps to remind readers in the guidance here as to the reason why not, i.e. because given there is no chargeable income (only FII), there is no deduction required.</p>
11	<p><b>Example 6.4.3.4 – Investment Company on-lends to Holding Company to acquire shares in Non-Resident Company</b>  <b><i>Application of the exclusion</i></b></p> <p>It would be helpful perhaps to remind readers here in the guidance as to the reason why not, i.e. because firstly there is no Case III dividend receipt in that period. Secondly, section 835C also has no application to Holding Company because the transfer pricing rules operate one way and cannot give a deduction for an IFL.</p>
16	<p><b>6.4.5 Meaning of Consideration Receivable / Consideration Payable</b></p> <p>We note the requirement for an arrangement to fall within the exclusion in section 835E, where the consideration payable under the arrangement is less than an arm's length amount. The consideration payable in respect of the chargeable period must be within the charge to income tax or corporation tax under Schedule D for the Supplier for the relevant accounting period. This places an excessive and unnecessary burden on the parties involved to ensure that the consideration is in fact paid by the acquirer before the end of the relevant chargeable period if the supplier is taxable on that consideration on a receipts basis.</p> <p>Given that section 835E now provides that no transfer pricing adjustment is required where no consideration is payable (and the relevant conditions in section 835E are met), it would be helpful if the guidance made clear that in practice, Revenue will accept that there is no requirement to actually pay the consideration before the end of the relevant chargeable period.</p>
17	<p><b>Example 6.4.5.1 – No interest paid in the chargeable period.</b></p> <p>Does part-payment of interest disapply an exemption?</p> <p>Does an administrative delay in payment disapply an exemption (assuming interest taxed on a receipts basis)? Even if it does, what are the consequences?</p> <p>In Example 6.4.5.1, it would be helpful if the consequences of the exemption not applying are explained. If the exemption does not apply in that example because there is no chargeable income at all, why would section 835C be relevant at all to Investment Company? What happens in the second year when the consideration is paid? If the trade is ongoing presumably the trading company is a qualifying person in year two with respect to the ongoing arrangement so that the exemption will be available in that second year? The Tradeco itself will never benefit from section 835E anyway. Clarification on this would be welcome.</p>

Feedback submitted to Revenue on 24 June 2022 on the draft updated Section 6 of the Transfer Pricing Tax and Duty Manual (TDM) which was circulated to the TALC BEPS Implementation Subcommittee on 2 June 2022.

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17	<p><b>Example 6.4.5.1 – No interest paid in the chargeable period.</b></p> <p>The guidance would benefit from clearer comments on the issue of paid/received and payable/receivable.</p> <p>Also, as alluded to above, the guidance would benefit from a full example involving an IFL to a trader which sets out the full analysis, instead of the current approach of an IBL example above and then separate comments here adapting the IBL example to an IFL one.</p>
17	<p><b>Example 6.4.5.1 – No interest paid in the chargeable period.</b></p> <p>Our understanding was that the November 2021 Main TALC meeting discussed replacing references to “received” with “received or receivable” in order to eliminate all doubt of recognition mismatches arising during the same chargeable period (i.e. Case III receipt vs Case I deduction). Additionally, the minutes from the November meeting seem to suggest that practitioners can interpret “receivable” as “received” on the basis that TP legislation is interpreted in a similar manner. Are we to take this example as Revenue’s view that such treatment only extends to the hypothetical amounts receivable/payable and not to cases where there is actual consideration as part of the agreement?</p>
21	<p><b>Example 6.5.3.1 - Arrangement undertaken as part of a scheme to obtain a tax advantage in connection with another arrangement</b></p> <p>To avoid any unnecessary confusion around the scope of Example 6.5.3.1, it would be helpful if the first sentence under the diagram could be moved above the diagram to make it clear that it forms part of the background facts upon which the example is based. The sentence to be moved reads as follows:</p> <p>“Arrangement 1 has been entered into as part of a scheme the sole or main purpose of which is to obtain a tax advantage in connection with arrangement 2, being the offset of trading losses of Trading Company on a value basis against interest receivable from Non-Resident Company for the accounting period ended 31 December 2022.”</p>
22	<p><b>Example 6.5.3.2 – Bona fide group treasury activity</b></p> <p>It would be helpful if this sentence could clarify that only Holding Company and Trading Company are the members of the group that have excess cash balances, for the avoidance of doubt.</p>
22	<p><b>Example 6.5.3.2 – Bona fide group treasury activity</b></p> <p>Should this be a reference to Group Treasury Company instead of Trading Company?</p>
23	<p><b>6.6 Interaction between section 835E and capital allowances provisions</b></p> <p>A worked example would be welcome here to allow taxpayers to fully understand the kind of scenario where these provisions would be applicable.</p>