STATUTORY INSTRUMENTS

2011 No. 1784

CORPORATION TAX

The Corporation Tax Act 2010 (Factors Determining Substantial Commercial Interdependence) Order 2011

Made - - - -	*20th July 2011*
Laid before the House of Commons	*21st July 2011*
Coming into force - -	*11th August 2011*

The Treasury makes the following Order in exercise of the powers conferred by section 27(3) of the Corporation Tax Act 2010(**a**) and section 55(5) of the Finance Act 2011(**b**).

Citation, commencement and effect

1.—(1) This Order may be cited as the Corporation Tax Act 2010 (Factors Determining Substantial Commercial Interdependence) Order 2011.

(2) This Order shall come into force on 11th August 2011.

(3) This Order shall have effect for accounting periods ending on or after 1st April 2011.

Factors taken into account in determining substantial commercial interdependence

2. In determining for the purposes of section 27 of the Corporation Tax Act 2010 (attribution to persons of rights and powers of their associates) whether a relationship between two companies amounts to "substantial commercial interdependence", the following factors are to be taken into account—

(a) the degree to which the companies are financially interdependent,

(b) the degree to which the companies are economically interdependent, and

(c) the degree to which the companies are organisationally interdependent.

"Financially interdependent"

3. Two companies are "financially interdependent" for the purposes of article 2 if (in particular)—

(a) one gives financial support (directly or indirectly) to the other, or

(b) each has a financial interest in the affairs of the same business.

(**a**) 2010 c. 4. Section 27 was substituted by section 55(1) of the Finance Act 2011 (c. 11).
(**b**) 2011 c. 11.

“Economically interdependent”

4. Two companies are “economically interdependent” for the purposes of article 2 if (in particular)—

(a) the companies seek to realise the same economic objective,

(b) the activities of one benefit the other, or

(c) the companies have common customers.

“Organisationally interdependent”

5. Two companies are “organisationally interdependent” for the purposes of article 2 if (in particular) the businesses of the companies have or use—

(a) common management,

(b) common employees,

(c) common premises, or

(d) common equipment.

Angela Watkinson
Jeremy Wright
20th July 2011 Two of the Lords Commissioners to Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

Section 55(1) of the Finance Act 2011 (c. 11) substituted a new section 27 into the Corporation Tax Act 2010 ("CTA") (c. 4).

Where companies are associated, it can affect the thresholds at which they fall within the small profits rate or the main rate of corporation tax. In establishing who controls a company, and whether two companies are under common control and therefore associated, sections 450 ("control") and 451 (section 450: rights to be attributed etc) CTA attribute to an individual all the rights and powers in a company that are held by his or her associates. Section 27(1) CTA (attribution to persons of rights and powers of their associates) provides that two companies will not be associated under the relevant CTA provisions if there is not a relationship of "substantial commercial interdependence" between them.

Section 27(3) CTA gives the Treasury the power to prescribe factors that are to be taken into account in determining whether a relationship between two companies amounts to substantial commercial interdependence for the purposes of section 27(1)(b) CTA. This Order prescribes these factors.

Section 55(5) of the Finance Act 2011 permits the first Order made under the power in section 27(3) CTA to have effect in relation to accounting periods ending on or after 1st April 2011. Article 1(3) provides that this Order shall have effect in relation to accounting periods ending on or after 1st April 2011. This Order therefore has retrospective effect.

Article 2 provides that in determining for the purposes of section 27 CTA whether there is "substantial commercial interdependence" between two companies, the degree to which the companies are financially, economically or organisationally interdependent is to be taken into account.

Article 3 explains what is meant by "financially interdependent" in this context.

Article 4 explains what is meant by "economically interdependent" in this context.

Article 5 explains what is meant by "organisationally interdependent" in this context.

A Tax Information and Impact Note covering this instrument was published on 9 December 2010 alongside the draft clause that was enacted as section 55 of the Finance Act 2011 and is available on the HMRC website at http://www.hmrc.gov.uk/budget-updates/autumn-tax/tiin1335.htm. It remains an accurate summary of the impacts that apply to this instrument.

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