

INTM700000

International Movements of Capital

[INTM700100](#)

Overview

[INTM700110](#)

Overview – previous rules

[INTM700200](#)

Repeal of the Treasury Consents regime

[INTM700300](#)

Reporting requirement

[INTM700310](#)

Reporting requirement – where should reports be sent?

[INTM700400](#)

Who should make reports?

[INTM700500](#)

Nomination arrangements

[INTM700600](#)

What is reportable?

[INTM700700](#)

Exclusions from the reporting requirement

[INTM700710](#)

Exclusions from the reporting requirement – cash pooling arrangements

[INTM700720](#)

Exclusions from the reporting requirement – issues of shares and debentures

[INTM700730](#)

Exclusions from the reporting requirement – transfers of shares and debentures

[INTM700800](#)

What information should the report include?

[INTM700900](#)

Valuing transactions

[INTM701000](#)

Other provisions

[INTM701100](#)

Commencement

[INTM701200](#)

Regulations

INTM700100 - International Movement of Capital - overview

FA09/S37

FA09/S37 provides for the repeal of the Treasury Consents legislation in ICTA/S765 to 767 and its replacement with a requirement to report to HMRC the details of certain international transactions whose value exceeds £100 million. The detailed provisions are in FA09/SCH 17.

These changes were introduced as a result of the Government's review of the taxation of foreign profits and have effect for events or transactions taking place on or after 1 July 2009.

It is important to note that the new rules are limited to transactions whose value exceeds £100 million. In practice the new reporting requirement will therefore be restricted to large groups with substantial activities outside the United Kingdom. It does not have a general application in the way that the previous rules did.

FA09/SCH 17 is divided into three parts. Part 1 deals with the repeal of the Treasury Consents legislation (see [INTM700200](#)), part 2 outlines the reporting requirement ([INTM700300](#) to [INTM701000](#)) and part 3 contains the commencement provisions ([INTM701100](#)).

FA09/SCH 17 contains a number of regulation making powers currently reflected in the International Movement of Capital (Required Information) Regulations, S.I. 2009/ No. 2192. Their provisions are described in the relevant parts of this guidance.

INTM700110 - International Movement of Capital - overview - previous rules

FA09/S37 introduced SCH 17 which provides for the repeal of the Treasury Consents legislation and the introduction of a new reporting requirement in respect of certain international movements of capital.

The provision that became ICTA/S765 was originally introduced in 1951. Subsequent consolidation and amendment divided this into ICTA/S765, 766 and 767. More recently European developments drove the introduction of S765A.

The situations to which ICTA/S765 has been applied over the decades have changed in reaction to significant developments in UK tax law such as the introduction of capital gains tax and the controlled foreign company rules as well as to commercial developments.

To ease administration S765 and its predecessors provided that the Treasury could issue 'general consents'. If a transaction was within a general consent the company did not have to make a special application, it could go ahead and do what it proposed.

ICTA/S765A removed from the consent regime all movements of capital to which the European Community Directive on Capital Movements applied. But although companies no longer needed Treasury consent they were required to report to HMRC any transaction they carried out to which, but for S765A, they would have needed special consent.

There is extensive guidance on ICTA/S765 and S765A in the Company Taxation Manual (see [CTM34300](#)). S765A required reports to be submitted to HMRC within six months of the transaction being carried out. Some of the guidance in the Company Taxation Manual will therefore remain relevant until all transactions carried out before 1 July 2009 have been reported.

INTM700200 - International Movement of Capital - repeal of the Treasury Consents regime

FA09/SCH 17/Part 1

SCH 17/Part 1 repeals the Treasury Consent legislation at ICTA/S765, the reporting requirement at S765A together with the offence of failure to comply with S765 and the interpretative provisions at S766 and 767.

SCH 17/Para 2 contains consequential amendments removing S765A from the scope of the penalty provisions relating to special returns in TMA/S98.

SCH 17/Para 3 carries the effect of the repeals into the Finance Acts which previously amended ICTA/S765 to 767.

Treasury Minute dated 22 June 2009

As part of the transitional arrangements between the Treasury Consents regime and the new rules in FA09/SCH 17 the Treasury exercised its powers under S765(4)/ICTA and issued a minute amending the general consents. The Treasury Minute inserted an additional class of transactions to which general consent would be given.

It covered transactions of the classes described in ICTA/S765(1)(c) and (1)(d) for which no general consent was otherwise given. It applied to transactions carried out on or after 1 July 2009 and on or before the date of Royal Assent of Finance Bill 2009 (21 July 2009).

The purpose of this Minute was to provide certainty regarding the treatment of transactions carried out between the intended commencement date of the new provisions and the date on which those provisions became law following Royal Assent.

INTM700300 – International Movement of Capital - reporting requirement - outline

SCH 17/Para 4

SCH 17/Para 4 describes the reporting requirement. It applies to any UK corporate parent which is a 'reporting body' at the time that a reportable event or transaction occurs. Such reportable events or transactions must be reported to an officer of HM Revenue and Customs within six months.

The report must include such information relating to the event or transactions as is specified in regulations made by the Commissioners for HM Revenue and Customs ('the Commissioners'). The purpose of the report is to enable the Commissioners to consider whether or not the event or transaction gives rise to an advantage in relation to UK taxation.

INTM700310 - International Movement of Capital - reporting requirement - where should reports be sent?

SCH 17/Para 4

The legislation specifies that the reports should be sent to an officer of HMRC so there is no need to send or copy them to HM Treasury. The recommendation is that businesses should address the reports directly to the customer relationship manager ('CRM') dealing with their affairs. In cases where a business does not have a CRM appointed the reports should be sent to the office to which corporation tax returns are made.

INTM700400 - International Movement of Capital - who should make reports?

SCH 17/Paras 5 to 7

SCH 17/Para 5 and 6 define the situations in which a body corporate will be a 'reporting body'. A group of companies will generally only have one reporting body, which will be the top UK resident holding company. For a foreign owned group this will not necessarily be the group's ultimate parent company. However some groups may have more than one reporting body and SCH 17/Para 6 provides a mechanism whereby certain reporting bodies may collectively nominate one of their number to be responsible for all aspects of the reporting requirement.

SCH 17/Para 5 sets out a general condition that a body corporate, referred to as 'Body A', can only be a reporting body when it is a 'UK corporate parent' which is defined in SCH 17/Para 7 as the top UK resident holding company of a group which is not itself controlled by a UK resident body corporate.

Sub-paragraphs 2 to 5 set out four additional conditions, any one of which must also be met before Body A can be considered to be a reporting body.

These rules establish a reporting body to be the parent company of a UK owned group or a UK resident company which heads part of a foreign owned group. 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 (see [INTM700410](#)).

SCH17/Para 7 defines 'UK corporate parent' as a UK resident body corporate which controls one or more bodies corporate that are not resident in the UK and is not itself controlled by a UK body corporate.

The purpose of these provisions is to establish the reporting requirement at a group level; it is not intended to be the responsibility of individual companies within the group to report particular transactions as was the case with the Treasury Consents rules.

INTM700500 - International Movement of Capital - nomination arrangements

SCH 17/Para 6

SCH 17/Para 6 contains the rules governing the nomination process mentioned in [INTM700400](#). A nomination can only be made where two or more UK corporate parents are controlled by the same foreign parent, although the arrangement does not have to cover all such corporate parents. Under the arrangement the nominated reporting body will be responsible for all the requirements of the Schedule on behalf of the other parties.

SCH 17/Para 6(3) empowers a party to a nominating arrangement to withdraw from it unilaterally.

SCH 17/Paras 6(4) and (5) enable the Commissioners to make regulations governing the nominating arrangements and specify that such regulations may include provision regarding entry and withdrawal from an arrangement and the related information that must be supplied to HMRC. They may also specify the circumstances in which a body corporate is treated as withdrawing from an arrangement. The regulation making power in SCH 17/Para 6 has been exercised.

Nomination arrangements - provisions of S.I. 2009 / No. 2192

The regulations specify that the parties to such an arrangement must give notice of the arrangement to an officer of Revenue and Customs within 28 days of entering into it.

Regulation 6(3) requires the notice to be in writing and signed by all the parties to the arrangement.

Regulation 6(4) requires the notice to state the name and tax reference of each party and to state which of them is the nominated reporting body.

Regulation 6(5) provides that the parties to an arrangement are treated as having withdrawn from it if they do not give notice to an officer of Revenue and Customs in accordance with paragraphs (2) to (4).

Regulation 6(6) provides that if a party to an arrangement ceases to be controlled by the foreign parent, that party is treated as having withdrawn from the arrangement.

Regulation 6(7) requires that a party which withdraws from or is treated as withdrawing from an arrangement must give notice to an officer of Revenue and Customs and to any other party to the arrangement of that fact within 28 days of the date of withdrawal or the date on which it ceases to be controlled by the foreign parent, as the case may be.

As can be seen from these regulations such arrangements are intended to be entered into voluntarily by companies where doing so will simplify the administration of the reporting requirement within the group. HMRC has no power to 'deem' a particular company as a nominated reporting body.

INTM700600 - International Movement of Capital - what is reportable?

SCH 17/Para 8

The Schedule operates on the basis of describing general categories of reportable events and transactions and then providing a series of exclusions from these (see [INTM700700](#)).

SCH 17/Para 8 sets out what is meant by reportable transactions or events. The basic test is that their value must exceed £100 million. No report is required below this limit.

The paragraph goes on to specify that above the limit only certain categories of events and transactions are reportable. These categories are;

- 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.

There is a provision allowing additional categories to be specified in regulations made by HMRC. This power has not yet been exercised.

SCH 17/Para 8(3) sets out that for the purposes of the Schedule a foreign subsidiary is a controlling partner in a partnership if, whether alone or taken together with one or more other partners that are also subsidiaries, it controls the partnership.

SCH 17/Para 8 also enables HMRC to make regulations about how the value of an event or transaction is to be determined for the purposes of the reporting requirement. The relevant legislation forms part of S.I. 2009 / No. 2192 (see [INTM700900](#)).

There is also a power in SCH 17/Para 8(7) enabling HMRC to increase the £100 million limit specified in the Schedule. This power has not yet been exercised.

INTM700700 - International Movement of Capital - exclusions from the reporting requirement

SCH 17/Para 9

SCH 17/Para 9 sets out the circumstances in which otherwise reportable transactions are excluded from the reporting requirement. These cover transactions;

- carried out in the ordinary course of a trade
- between residents in the same territory, or
- the giving of any security by a foreign subsidiary to a financial institution.

HMRC is also empowered to add to these exclusions in regulations. This power has been exercised and the additions are described in the guidance beginning at [INTM700710](#).

INTM700710 - International Movement of Capital - exclusions from the reporting requirement - cash pooling arrangements

SCH 17/Para 9 and Regulation 5(1)(a) of S.I. 2009 / No. 2192

Regulation 5(1)(a) excludes certain transactions from the reporting requirement in addition to those specified in FA09/SCH 17/Para 9(1)(a) to (d). It applies to transactions pursuant to cash pooling arrangements where the conditions in Regulation 5(2) have been met.

Regulation 5(2) provides that, before the transaction takes place, the parties to the cash pooling arrangements must notify an officer of Revenue and Customs in writing of the terms of the arrangements and written notice must have been given to the parties by an officer of Revenue and Customs that transactions entered into pursuant to the arrangements after the date of the notice will be excluded transactions for the purposes of the Schedule.

The purpose of this exclusion is to remove from the reporting requirement large transactions carried out under group cash pooling arrangements where those arrangements have been reviewed by HMRC.

Cash Pooling Arrangements

The legislation does not define 'cash pooling arrangements'. Broadly they are arrangements which enable companies to minimise expenditure in connection with banking facilities. Entities within a group may transfer their surplus cash to a single account overnight and, in return, draw on that account for their cash flow needs. The central account is usually held by a group treasury company.

The detail of such arrangements will vary enormously but in general the result is a frequently changing network of very short term intra-group loans reflecting the needs of operating companies. Where such transactions are not otherwise excluded from the scope of the reporting requirement regulation 5(1)(a) may be of value. Due to the £100 million limit (see [INTM700600](#)) it is not expected that many groups will need to consider this exclusion.

Notifying HMRC

Where a group wishes to take advantage of the exclusion for cash pooling arrangements it should in the first place approach its CRM or the office to which its corporation tax returns are made.

The business should supply sufficient information concerning the terms on which group cash is pooled to enable HMRC to consider the risks attached to excluding the related transactions from the reporting requirement. The process will involve description and discussion of a group's procedures and it is very likely that the provision internally prepared documentation describing those processes will be of value.

Changes to arrangements

Where changes are made to cash pooling arrangements subsequent transactions will not be excluded from the scope of the reporting requirement. Groups will therefore need to notify HMRC of such changes. However, this should only be necessary where such changes have a material impact on the arrangements.

For example, the variation of an interest rate should not be regarded as a change if the previously notified arrangements provide for a floating rate and the variation reflects an underlying movement in LIBOR. It would be a change to move interest rates from a floating to a fixed basis where such a change was not a provision of the original arrangements.

INTM700720 - International Movement of Capital - exclusions from the reporting requirement - issues of shares and debentures

SCH 17/Para 9 and Regulation 5(1)(b) of S.I. 2009 / No. 2192

Regulation 5(1)(b) provides that transactions described in the Schedule to the Regulations and meeting any specified conditions are excluded from the reporting requirement. The provisions in the Schedule largely reflect the exclusions previously embodied in the General Consents given under the repealed legislation at ICTA/S765 and will therefore already be familiar (see [INTM700110](#)). However there are a number of differences between the two sets of rules.

Paragraphs 2 to 6 of the Schedule to S.I. 2009 / No. 2192

Paragraph 2 of the Schedule excludes the issue of shares by the foreign subsidiary to the reporting body or to another company belonging to the same group as the reporting body. The shares must not be redeemable and the issue must be made either at market value and for consideration paid in cash to the foreign subsidiary or made in or towards payment for any business undertaking or property acquired by the foreign subsidiary at market value.

Paragraph 3 of the Schedule excludes the issue of shares by the foreign subsidiary to a person not connected with the reporting body. The issue must be at market value and for consideration paid to the foreign subsidiary and must not be an issue to a nominee or trustee for a person who is connected with the reporting body. There must not be any arrangements by which the reporting body, a person connected with the reporting body, or a nominee or trustee for that person or the reporting body is or may become entitled to the shares or any interest in any of them.

Paragraph 4 of the Schedule excludes the issue of shares by the foreign subsidiary to all its shareholders. The shares must be issued in respect of and in proportion to the shares already held at the time of the issue. The issued shares must not be redeemable or, if no shares are issued to a company resident in the United Kingdom or to a nominee or trustee for such a company, the shares must be issued at market value and for consideration paid in cash to the foreign subsidiary.

Paragraph 5 of the Schedule excludes the issue of debentures by the foreign subsidiary to the reporting body or a company in the same group as the reporting body. There must not be a loan associated with or present in connection with the issue. This applies to any loan which is made by a company not resident in the United Kingdom to a company which is resident in the United Kingdom. It does not matter whether or not the loan is of the same amount as the amount secured by the debentures.

Paragraph 6 of the Schedule excludes the issue of debentures by the foreign subsidiary to persons who are not connected with the reporting body. The debentures must be issued at market value and for consideration paid to the foreign subsidiary and must not be issued to a nominee or trustee for a person who is connected with the reporting body. There must not be any arrangements by which the reporting body, a person connected with the reporting body, or a nominee or trustee for that person or the reporting body is or may become entitled to the debentures or any interest in them.

INTM700730 - International Movement of Capital - exclusions from the reporting requirement - transfers of shares and debentures

SCH 17/Para 9 and Regulation 5(1)(b) of S.I. 2009 / No. 2192

Regulation 5(1)(b) provides that transactions described in the Schedule to the Regulations and meeting any specified conditions are excluded from the reporting requirement. The provisions in the Schedule largely reflect the exclusions previously embodied in the General Consents given under the repealed legislation at ICTA/S765 and will therefore already be familiar (see [INTM700110](#)). However there are a number of differences between the two sets of rules.

Paragraphs 7 to 10 of the Schedule to S.I. 2009 / No. 2192

Paragraph 7 of the Schedule excludes certain transfers by the reporting body or any company (whether or not it is resident in the United Kingdom) of shares or debentures of the foreign subsidiary. The exclusion applies where the transfer is to a person not connected with the reporting body. The transfer must be at market value and for consideration paid to the transferor and must not be to a nominee or trustee for a person who is connected with the reporting body. There must not be any arrangements by which the reporting body, or a nominee or trustee for the reporting body, or a person connected with the reporting body, or a nominee or trustee for a person connected with the reporting body is or may become entitled to the shares or debentures or any interest in them.

Paragraph 8 of the Schedule excludes transfers by the reporting body of shares or debentures of the foreign subsidiary to a company in the same group as the reporting body.

Paragraph 9 of the Schedule excludes transfers other than by the reporting body of shares or debentures of a foreign subsidiary in which the reporting body has an interest. The transfers must be permitted or caused by the reporting body and must be to the reporting body or to a company in the same group as the reporting body.

Paragraph 10 of the Schedule excludes transactions whereby the reporting body or a company in the same group as the reporting body gives security over the shares of a foreign subsidiary. The security must be given in connection with the borrowing of money and the lender must not be connected to the reporting body or to a company in the same group as the reporting body.

INTM700800 - International Movement of Capital - what information should the report include?

SCH 17/ Para 4 and Regulation 3 of S.I. 2009 / No. 2192

The report must include such information relating to the event or transactions as is specified in the regulations made by HMRC. The purpose of the report is to enable HMRC to consider whether or not the event or transaction gives rise to an advantage in relation to UK taxation.

Regulation 3 deals with the information which a reporting body is required to provide. It provides that the information required as it relates to a foreign subsidiary is its name and the territory from which it derives its status as a body corporate. The report should also contain a full description of the steps taken in the course of a transaction including in particular the date, the names of the parties, the reasons for it, and an estimate of its effect on liability to United Kingdom tax.

It can be seen from these provisions that the new reporting requirement takes a different approach to that under S.I. 1990 / No. 1671 which set out in some detail what was to be supplied under ICTA/S765A (see [INTM700110](#)). When compiling a report under Schedule 17 businesses should bear in mind the purpose of that report when viewed from HMRC's perspective.

The legislation states that the reports are intended to enable HMRC to consider whether or not the event or transaction gives rise to an advantage in relation to UK taxation. This is a fundamental element of the department's work in assessing UK tax risks. The reports are therefore intended to play a part in the ongoing risk assessments carried out on all major groups. With this in mind a business needing to make a report ought to ensure that it is sufficiently detailed to make the consequences of the transaction clear. There is no advantage for either HMRC or businesses if additional information has to be sought (whether under formal information powers or not) because the report is insufficient.

To this end, for example, the inclusion of key documents relating to a particular transaction is to be encouraged. A particular agreement is likely to contain a great deal of factual information about the parties involved and the steps taken. Similarly, in multi-stage transactions a diagrammatic approach setting out what has happened will in most cases provide a more effective report than one that relies solely on description, although a narrative element will usually be required.

The extent to which the tax effect of a particular transaction can be estimated will vary from case to case. A distinction might be drawn between transactions planned and intended to generate a UK tax advantage and those which might well have such an effect but not in a precisely quantifiable manner. An estimate may therefore not necessarily be expressed in terms of a certain sum of money each year but as a narrative of the likely consequences. HMRC recognises that a reasonable estimate of the tax effect of some transactions may not be possible. In such cases it would be appropriate to include a brief description of the reasons for this.

INTM700900 - International Movement of Capital - valuing transactions

Regulation 4 of S.I. 2009 / No. 2192

Regulation 4 deals with determining the value of an event or transaction. Regulation 4(1) introduces the specific valuation regulations.

Regulation 4(2) provides that the value of an issue or transfer of shares or debentures is its market value.

Regulation 4(3) provides that the value of an event or transaction which results in a foreign subsidiary becoming, or ceasing to be, a controlling partner in a partnership is the market value of the share of the subsidiary in the assets of the partnership immediately after it becomes a controlling partner or, as the case may be, immediately before it ceases to be a controlling partner.

Regulation 4(4) provides for the aggregation of the value of all the events and transactions in a series.

'Market value' is not defined in the legislation and should be taken to have its ordinary meaning, implying willing buyers and sellers acting at arm's length. HMRC does not expect businesses to undertake valuations as a matter of course. The key question for any particular transaction will usually be whether it is worth more or less than £100 million. For the purposes of the reporting requirement a transaction worth £90 million is no more reportable than one worth £5 million; likewise a transaction clearly worth more than £100 million is reportable regardless of its precise value.

INTM701000 - International Movement of Capital - other provisions

SCH 17/Para 10 establishes that failure to comply with the reporting requirement will result in a penalty being chargeable under section 98, TMA. Such penalties 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.

SCH 17/Para 11 states that regulations and orders made under Part 2 of the Schedule are to be made by statutory instrument, subject to negative resolution.

SCH 17/Para 12 contains interpretative provisions. In particular it sets out that for the purposes of the Schedule '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;

- 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 control means the right to a share of more than 50% of the assets, or of more than 50% of the income, of the partnership.

Definitions are also included for 'foreign', 'partnership', 'subsidiary', 'transaction' and 'series of transactions'.

INTM701100 - International Movement of Capital - commencement

FA09/SCH 17/Paras 13 & 14

SCH 17/Para 13 specifies that the schedule has effect in relation to events taking place and transactions carried out on or after 1 July 2009.

SCH 17/Para 14 contains two transitional provisions. The first provides that any reports in respect of events or transactions occurring before 1 October 2009 should be reported by 1 April 2010. This is intended to allow companies a period of time beyond the ordinary time limit (see [INTM700300](#)) in which to establish internal procedures to monitor reportable transactions and events.

The second specifies that regulations made under the Schedule may come in to force on or after 1 July 2009 so long as they are made within one year of the Finance Act being passed.

The transitional arrangements covering the repeal of the Treasury Consent rules are described at [INTM700200](#).

INTM701200 - International Movement of Capital - regulations

S.I. 2009 / No. 2192

In accordance with the power conferred by SCH 17/Para 14(1), the regulations have effect in relation to events which take place on or after 1 July 2009 and to transactions which are carried out on or after that date. The earliest date by which a report is required is 1st April 2010 (see [INTM701100](#)).