

# Corporation tax: mismatch schemes, property return swaps and manufactured payments

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## Who is likely to be affected?

Companies using avoidance schemes involving tax mismatches, property return swaps and manufactured payments.

## General description of the measure

The measure blocks three avoidance schemes: a scheme using a partnership to avoid the group mismatch legislation, a scheme exploiting the property total return swaps legislation; and a scheme involving manufactured payments and loan write-offs.

## Policy objective

This measure supports the Government's objective of promoting fairness in the tax system. The measure does this by preventing loss of tax through three avoidance schemes. It provides:

- that a tax advantage will be denied where a single company is involved in a mismatch scheme;
- that the property return swaps legislation will not apply where connected companies enter a swap, or where avoidance is involved, and that in other cases the capital gain for tax purposes will be limited by reference to the actual return made by a company; and,
- that manufactured payments will be taxed when a benefit is received in any form.

## Background to the measure

This measure was announced on 5 December 2012.

No formal consultation is planned.

## Detailed proposal

### Operative date

The changes to the property return swaps legislation and the new tax mismatch legislation will apply to accounting periods beginning on or after 5 December 2012, with a period of account to be treated as beginning on that date.

The legislative changes to the manufactured payments legislation will apply in relation to dividends or interest paid on or after 5 December 2012.

## **Current law**

### Group mismatch schemes:

Section 938A Corporation Tax Act 2010 (CTA 2010) provides that losses and profits from group mismatch schemes are not to be brought into account as debits or credits for the purposes of Part 5 or Part 7 of the Corporation Tax Act 2009 (CTA 2009). Group mismatch schemes are defined in section 938B CTA 2010 which refers to a relevant tax advantage, and that advantage is defined in section 938D as an economic profit or loss that arises as a result of asymmetries in the way different members of the scheme group bring or do not bring amounts into account.

### Property return swaps:

Section 641 CTA 2009 provides that certain derivative contracts are to be taxed on a chargeable gains basis including those covered by section 650 CTA 2009 (property based total return swaps). Section 650 defines the swaps which fall within that category and section 659 CTA 2009 sets out what part of the return from those swaps is to be charged as a capital gain. The credits and debits which are charged in that way are given by a formula which defines the capital return by reference to the percentage change in the capital value index used in the swap.

### Manufactured payments:

Section 812 CTA 2010 provides that where a stock lending arrangement exists, but no provision is made for manufactured payments to be made which represent dividends or interest, then a manufactured payment is deemed to be made to the lender.

## **Proposed revisions**

Legislation will be introduced in Finance Bill 2013 to make the following changes:

### Mismatch scheme:

New sections 938O to 938V CTA 2010 will provide that a profit or loss is not to be brought into account where one company creates an economic profit as a result of asymmetries in the way it brings or does not bring debits and credits into account.

### Property return swap:

Section 643 CTA 2009 will be amended so that contracts between connected persons cannot fall within that section. Section 650 will be amended so that contracts between connected persons, or contracts with the purpose of securing a tax advantage, cannot fall within that section. Section 659 will be amended so that capital returns will be calculated by reference to the actual return on the contract.

### Manufactured payments:

Section 812 CTA 2010 will be amended so that where a stock lending arrangement exists and a provision is made so that the lender receives other benefits, including the release of a liability to pay any amount, as well as payments representing the dividend interest, then a manufactured payment is deemed to be made.

## Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	nil	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. This measure supports the Exchequer in its commitment to protect revenue.					
<b>Economic impact</b>	The measure is not expected to have any significant economic impact.					
<b>Impact on individuals and households</b>	No impact is expected as these are avoidance schemes which are only used by companies					
<b>Equalities impacts</b>	No equalities impacts are expected.					
<b>Impact on business including civil society organisations</b>	<p>This measure addresses avoidance using contrived schemes involving loan relationships and derivatives. These schemes constitute an unfair advantage and in removing that there will be no impact on the normal commercial transactions of businesses and civil society organisations.</p> <p>There will be no additional administrative burden on businesses undertaking normal commercial transactions.</p>					
<b>Operational impact (£m) (HMRC or other)</b>	No operational impact is expected.					
<b>Other impacts</b>	Other impacts have been considered and none have been identified.					

## Monitoring and evaluation

The measure will be monitored through monitoring of disclosures of new avoidance schemes to circumvent the measure, and through regular communication with affected taxpayers and practitioners.

## Further advice

If you have any questions about this change, please contact Chris Murrice on 020 7147 2818 (email: [chris.murrice@hmrc.gsi.gov.uk](mailto:chris.murrice@hmrc.gsi.gov.uk)) or Geoff Heaton on 020 7147 2577 (email: [geoff.heaton@hmrc.gsi.gov.uk](mailto:geoff.heaton@hmrc.gsi.gov.uk))

**1 Corporation tax: tax mismatch schemes**

- (1) Schedule 1 contains provision about tax mismatch schemes.
- (2) The amendments made by that Schedule have effect in relation to schemes entered into at any time (including any time before the commencement date).
- (3) But section 938O in Part 21BA of CTA 2010 (as inserted by paragraph 3 of that Schedule) does not apply to—
  - (a) scheme losses or profits that relate to a time before the commencement date, or
  - (b) scheme profits that relate to a time on or after that date but are made in relation to a scheme entered into before that date.
- (4) In this section “the commencement date” means 5 December 2012.

## SCHEDULE 1

Section 1

## TAX MISMATCH SCHEMES

- 1 CTA 2010 is amended as set out in paragraphs 2 to 4.
- 2 In section 1(4) (overview of Act) after paragraph (j) insert –  
“(ja) tax mismatch schemes (see Part 21BA),”.
- 3 After Part 21B insert –

**“PART 21BA**

## TAX MISMATCH SCHEMES

**938O Losses and profits from tax mismatch scheme to be disregarded**

- (1) This section applies to a company that is (at any time) a party to a tax mismatch scheme.
- (2) No scheme loss or profit made by the company in any accounting period in relation to the scheme is to be brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).
- (3) An amount that would, apart from this section, be brought into account for the purposes of Part 5 or 7 of that Act as respects any matter –
  - (a) is treated, for the purposes of section 464(1) or (as the case may be) 699(1) of that Act (priority of Part 5 or 7 for corporation tax purposes) as if it were so brought into account, and
  - (b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.

**938P Meaning of “tax mismatch scheme”**

- (1) A scheme is a tax mismatch scheme if condition A or B is met.
- (2) Condition A is that, at the time the scheme is entered into, there is no practical likelihood that the scheme will fail to secure a relevant tax advantage of £2 million or more.
- (3) The Treasury may by order substitute a higher amount for the amount for the time being specified in subsection (2).
- (4) Any such substitution is to have effect in relation to schemes entered into on or after the day on which the order comes into force.
- (5) Condition B is that –
  - (a) the purpose, or one of the main purposes, of the company in entering into the scheme is to obtain the chance of securing a relevant tax advantage (of any amount), and

- (b) at the time the scheme is entered into –
  - (i) there is no chance that the scheme will secure a relevant tax disadvantage, or
  - (ii) there is such a chance, but the expected value of the scheme is nevertheless a positive amount.
- (6) If, at the time the company enters into the scheme, there are chances that the scheme would, if carried out, secure different relevant tax advantages or disadvantages in different circumstances, the amounts and probabilities of each must be taken into account in determining the expected value of the scheme.
- (7) In determining whether condition A or B is met, it is to be assumed that the parties to the scheme carry it out.
- (8) Where, at the time the scheme is entered into, the length of the scheme period is uncertain, condition A or B is met if it would be met on any reasonable assumption as to the length of the scheme period.
- (9) In determining whether condition A or B is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

**938Q Meaning of “scheme loss” and “scheme profit”**

- (1) A loss or profit made by a company in an accounting period is a “scheme loss” or “scheme profit” in relation to a tax mismatch scheme if the loss or profit –
  - (a) arises from a transaction, or series of transactions, that forms part of the scheme,
  - (b) is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009, and
  - (c) meets the first or second asymmetry condition.
- (2) The first asymmetry condition is that the loss or profit affects the amount of any relevant tax advantage secured by the scheme.
- (3) Where, at the end of the accounting period –
  - (a) it is not certain whether the scheme will secure a relevant tax advantage, or
  - (b) it is not certain what the amount of the relevant tax advantage secured by the scheme will be,a loss or profit is to be treated as meeting the first asymmetry condition if, at that time, there is a chance that the scheme will secure a relevant tax advantage and that the loss or profit will affect its amount.
- (4) Where –
  - (a) a loss or profit meets the conditions in subsection (1)(a) and (b), and
  - (b) a part, but not the whole, of the loss or profit meets the first asymmetry condition,only that part of the loss or profit is a “scheme loss” or “scheme profit”.
- (5) The second asymmetry condition is that the loss or profit –

- (a) does not meet the first asymmetry condition, but
  - (b) arises from a transaction, or series of transactions, that might (if events had turned out differently) have given rise to a loss or profit that would have done so.
- (6) References in this section to a loss or profit include a loss or profit arising in respect of interest or expenses.
- (7) In determining whether the condition in subsection (1)(b) or the first or second asymmetry condition is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

#### **938R Meaning of “relevant tax advantage” etc and “the scheme period”**

- (1) In this Part “relevant tax advantage”, in relation to a scheme, means an economic profit that –
- (a) is made by the company over the scheme period,
  - (b) meets the condition in subsection (3), and
  - (c) is not negligible.
- (2) In this Part “relevant tax disadvantage”, in relation to a scheme, means an economic loss that –
- (a) is made by the company over the scheme period,
  - (b) meets the condition in subsection (3), and
  - (c) is not negligible.
- (3) The condition is that the economic profit or loss arises as a result of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits for the purposes of Part 5 or 7 of CTA 2009.
- (4) A reference in this section to asymmetries includes, in particular –
- (a) asymmetries relating to quantification, and
  - (b) asymmetries relating to timing.
- (5) In this section –
- (a) a reference to an economic profit includes an increase in an economic profit and a decrease in an economic loss, and
  - (b) a reference to an economic loss includes an increase in an economic loss and a decrease in an economic profit.
- (6) In this Part “the scheme period”, in relation to a scheme, means the period during which the scheme has effect.

#### **938S Meaning of references to economic profits and losses**

- (1) An economic profit or loss is to be computed for the purposes of this Part taking into account, in particular –
- (a) profits and losses made as a result of the operation of the Corporation Tax Acts, and
  - (b) any adjustments required to reflect the time value of money.
- (2) In determining for the purposes of this Part the amount of an economic profit or loss made by the company over the scheme period, profits and losses made by the company are to be taken into account only to the extent that they are attributable to times at which the company is a party to the scheme.

### 938T Tax capacity assumption

- (1) This section applies for the purpose of determining whether a scheme will, or might, secure a relevant tax advantage.
- (2) The economic profits and losses made by the company over the scheme period must be calculated on the assumption that the company –
  - (a) obtains the full tax benefit of any loss made by the company in relation to a loan relationship or a derivative contract during the period, and
  - (b) incurs the full tax cost of any profit made by the company in relation to a loan relationship or a derivative contract during the period.
- (3) The “full tax benefit” of a loss is the reduction in the liability of the company to corporation tax that would result if –
  - (a) the loss were brought into account as a debit or as a reduction in a credit for the purposes of Part 5 or 7 of CTA 2009, and
  - (b) the company’s profits chargeable to corporation tax, disregarding the loss, were equal to the debit (or the reduction in the credit) determined by reference to the loss.
- (4) The “full tax cost” of a profit is the increase in the liability of the company to corporation tax that would result if –
  - (a) the profit were brought into account as a credit or as a reduction in a debit for the purposes of Part 5 or 7 of CTA 2009, and
  - (b) the company’s profits chargeable to corporation tax, disregarding the profit, were nil.

### 938U Meaning of “scheme”

In this Part “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

### 938V Priority

For the purposes of this Part the following provisions are to be treated as of no effect –

- (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
- (b) section 690 of that Act (derivative contracts for unallowable purposes);
- (c) Part 6 of TIOPA 2010 (tax arbitrage);
- (d) Part 7 of that Act (tax treatment of financing costs and income).”

- 4 In Schedule 4 (index of defined expressions) at the appropriate places insert –

“economic loss (in Part 21BA)

section 938S”



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“economic profit (in Part 21BA)	section 938S”
“relevant tax advantage (in Part 21BA)	section 938R”
“relevant tax disadvantage (in Part 21BA)	section 938R”
“scheme (in Part 21BA)	section 938U”
“scheme loss (in Part 21BA)	section 938Q”
“the scheme period (in Part 21BA)	section 938R”
“scheme profit (in Part 21BA)	section 938Q”.
“a tax mismatch scheme (in Part 21BA)	section 938P”

5 In section 231(8) of TIOPA 2010 (tax arbitrage: overview) for the words from “section” to the end substitute “sections 938N and 938V of CTA 2010 (this Part treated as of no effect for the purposes of Parts 21B and 21BA of CTA 2010 (group mismatch and tax mismatch schemes)).”

**EXPLANATORY NOTE**

**TAX MISMATCH SCHEMES**

**SUMMARY**

1. This clause and Schedule respond to tax avoidance schemes involving a tax mismatch. Tax mismatch schemes exploit the tax treatment of loan relationships and derivative contracts in the Corporation Tax Acts 2009 and 2010. The amendments block schemes where a company benefits from a tax advantage by creating a mismatch using a loan relationship or derivative. The changes apply, although they are not limited to, schemes where a company enters a loan relationship with a partnership of which it is a member and a loan is accounted for differently by the company and the partnership to give a tax advantage.

**DETAILS OF THE CLAUSE**

2. Subsection 1(1) introduces the Schedule which makes provisions for tax mismatch schemes.
3. Subsections 1(2) and 1(3) are commencement provisions.
4. Subsection 1(2) provides that the amendments made by the Schedule have effect in relation to schemes entered into at any time, including a time before the commencement date.
5. Subsection 1(3) provides that section 938O does not apply to scheme losses or profits that relate to a time before the commencement date, or to scheme profits that relate to a time on or after that date, but are made in relation to a scheme entered into before that date.
6. Subsection 1(4) gives the commencement date, which is 5 December 2012.

**DETAILS OF THE SECTION**

7. This Schedule inserts a new Part 21BA into Corporation Tax Act 2010 (CTA 2010). Part 21BA comprises new sections 938O to 938V.
8. New section 938O sets out the operative rule if a company is at any time in an accounting period party to a tax mismatch scheme (TMS). “Scheme losses and profits” made by the company in that period are not to be brought into account as debits or credits for the purposes of

Part 5 (loan relationships) and Part 7 (derivative contracts) of CTA 2009.

9. New section 938P defines a TMS.
10. New subsection (1) provides that a scheme is a TMS if either of two Conditions is met.
11. Subsection (2) sets out the first condition (Condition A) is that when the company enters into the scheme there is no practical likelihood that the scheme will fail to result in a “relevant tax advantage” (RTA) of £2m or more. An RTA is defined in section 938R. The tests under condition A and B are applied to the position that exists at the outset of the scheme.
12. Subsection (5) sets out the second condition (Condition B) which is that the purpose, or one of the main purposes, of entering into the scheme is to obtain the chance of securing an RTA. The tests under condition A and B are applied to the position that exists at the outset of the scheme.
13. New section 938Q defines “scheme loss” and “scheme profit” as a loss or profit made by a company in an accounting period in relation to a tax mismatch scheme (as defined in section 938P) if the loss or profit:
  - arises from a transaction, or series of transactions, that forms part of the scheme;
  - is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009; and
  - meets either of the asymmetry conditions in new subsections (2) or (5)..
14. New subsection (2) defines the asymmetry condition as that where the loss or profit affects the amount of any RTA secured by the scheme.
15. New subsection (4) applies where some of the loss or profit affects, or may affect, the amount of any RTA. In such a case just the part of the loss or profit that does or may affect the RTA is treated as a scheme loss or profit.
16. New subsection (5) applies the second asymmetry condition, if it becomes clear that a scheme will not (despite the fact that it is a TMS) produce an RTA.
17. New section 938R defines the term “relevant tax advantage” as an “economic profit” (see section 938S) which is not negligible that is

made by the company over the whole scheme period. Additionally the economic profit arises because of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits under the loan relationships or derivative contracts rules.

18. New section 938R(4) defines “Asymmetries” to include asymmetries in timing and quantification.
19. New subsection (5) makes clear that an economic profit includes an increase in an economic profit and a decrease in an economic loss [no, this proposed addition is misleading].
20. New subsection (6) defines scheme period to mean the period during which the scheme has effect.
21. New section 938S provides the meaning of references to economic profits and losses. An economic profit or loss takes into account profits or losses made as a result of the operation of the Corporation Tax Acts and any adjustments required to reflect the time value of money. In determining the amount of an economic profit or loss made by the company over the scheme period, amounts are only to be taken into account to the extent that they relate to the times when the company is party to the scheme.
22. New section 938T makes clear that in determining whether a scheme is a TMS it is assumed that the company obtains the full tax benefit of any loss made in relation to a loan relationship or derivative contract over the scheme period. Similarly it is assumed that the company incurs the full tax cost of any profit made from a loan or derivative over the scheme period. This ensures that the tax advantage must arise as a result of structurally asymmetrical tax treatment of the transactions and not because of circumstantial matters such as losses that might be available to shelter profits from the loan or derivative.
23. New section 938U defines “scheme” as including all arrangements, schemes and understandings of any type whether or not legally enforceable, whether involving a single transaction or series of transactions.
24. New section 938V is a scope or boundary provision. It ensures that in determining whether any amounts are brought into account apart from the tax mismatch rules (and so might give rise to an RTA), existing unallowable purpose, tax arbitrage, and tax treatment of financing costs and income rules are to be treated as of no effect. It follows that the tax mismatch rules apply in priority to those rules.
25. Paragraph 4 introduces references to the new tax mismatch legislation in Schedule 4 of CTA 2009.

26. Paragraph 5 makes a consequential amendment to the tax arbitrage legislation in section 231(8) of the Taxation (International and Other Provisions) Act 2010.

**BACKGROUND NOTE**

27. This clause and Schedule close a tax avoidance scheme in the area of loan relationships and derivatives.
28. The schemes targeted are those which aim to defeat the group mismatch legislation in part 21B of CTA 2010. That legislation prevents any tax advantage arising as a result of asymmetries arising between different companies in a group. An asymmetry may involve, for example, different members of a group of companies bringing different amounts into account in respect of the same loan or derivative. The new legislation will similarly prevent tax advantages from arising from asymmetries in other circumstances, not necessarily involving a group of companies, for example where a company brings a loan into account in one way, and a partnership of which the company is a member brings the loan into account differently.

## 1 Derivative contracts: property total return swaps etc

- (1) Chapter 7 of Part 7 of CTA 2009 (chargeable gains arising in relation to derivative contracts) is amended as follows.
- (2) In section 643 (contracts relating to land or certain tangible movable property) –
  - (a) in subsection (1), for “and C” substitute “, C and D”, and
  - (b) after subsection (4) insert –
    - “(4A) Condition D is that no two or more of the parties to the derivative contract are connected persons.”
- (3) In section 650 (property based total return swaps) –
  - (a) in subsection (1), for “to F” substitute “to H”, and
  - (b) after subsection (7) insert –
    - “(8) Condition G is that no two or more of the parties to the derivative contract are connected persons.
    - (9) Condition H is that the securing of a tax advantage is neither the main purpose, nor one of the main purposes, for which the company is a party to the derivative contract.  
“Tax advantage” has the meaning given by section 1139 of CTA 2010.”
- (4) In section 659 (meaning of “relevant credits” and “relevant debits”), after subsection (4) insert –
  - “(4A) But if the derivative contract has effect such that the return arising from the contract, so far as calculated by reference to that index, is calculated by reference to a percentage (“the capped percentage”) which is closer to zero than the full percentage change in that index over that period (or which is zero even though there has been a change in that index), for the purposes of subsection (4) R% is the capped percentage.”
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 5 December 2012.
- (6) But, for the purposes of subsection (5), an accounting period beginning before, and ending on or after, 5 December 2012 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

**EXPLANATORY NOTE**

**PROPERTY RETURN SWAPS**

**SUMMARY**

1. This clause responds to tax avoidance schemes involving property return swaps. Property total return swaps utilise the legislation in Corporation Tax Act 2009 (CTA 2009) which applies to swap contracts relating to land or to an index over the value of land. This clause amends the legislation to prevent these provisions from being used to produce losses which are unrelated to real exposure to movements in property prices.

**DETAILS OF THE CLAUSE**

2. Subsection (1) provides that Chapter 7 of part 7 of CTA 2009 is amended.
3. Subsection (2) inserts a new subsection 4A into section 643 of CTA 2009 and substitutes “and C” with “C and D” in subsection (1). Where section 643 and related provisions apply, the return from certain derivative contracts, relating to land or tangible movable property other than commodities is charged to corporation tax on chargeable gains.
4. Subsection 643(4A) introduces a new condition D, so that derivative contracts will only fall within section 643 if condition D is met.
5. Subsection (3) inserts new subsections (8) and (9) into section 650 of CTA 2009. Where that section and related provisions apply, the return from certain contracts involving a capital value index over land, and also involving interest rates, is charged to corporation tax on chargeable gains.
6. Subsection 650 (8) introduces a new condition G which must be met for section 650 to apply to a derivative contract.
7. Subsection 650 (9) introduces a new condition H which must be met for section 650 to apply to a derivative contract.
8. Subsection (4) adds a new subsection 4A to section 659. Section 659 includes a formula in subsection (4) which sets how to calculate credits or debits which are to be charged to corporation tax on chargeable gains.

9. New subsection 659(4A) provides that where a derivative contract has the effect that the return arising from a contract is lower (i.e. closer to zero, or zero) than the actual change in the index over that period, then for the purposes of the formula in section 659(4), the figure for R% is the actual return, and not the movement in the index.
10. Subsections (5) and (6) provide for commencement of the amendments to Chapter 7 of Part 7. They provide that the amendments have effect in relation to accounting periods beginning on or after 5 December 2012. An accounting period beginning before, and ending on or after 5 December 2012, is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods, for the purposes of the amendments provided for by subsection (1).

**BACKGROUND NOTE**

11. The amendments made by this clause prevent use of the property total return swaps legislation to obtain tax advantages. In many circumstances, returns from swaps entered into by companies are taxed or relieved as income. However in some circumstances where the swap has an underlying subject matter of land, or an index of changes in the value of land, a return can be taxed or relieved as capital.
12. This legislation is being used within groups of companies, in effect to convert capital losses into income losses, by entering into swaps between different members of the group, although overall the swap does not result in the group getting any net exposure to property. The new legislation will rule out any capital return where swaps are intra-group.
13. The formula used in the legislation is also being exploited in an attempt to generate capital gains which exceed those actually arising from the swap. The legislation will limit any capital return to the actual return under the contract.



## 1 Manufactured payments: stock lending arrangements

- (1) Section 596 of ITA 2007 (deemed manufactured payments: stock lending arrangements) is amended as set out in subsections (2) and (3).
- (2) For subsection (1) substitute –
  - “(1) This section applies if conditions A to C are met.
  - (1A) Condition A is that there is a stock lending arrangement in respect of securities.
  - (1B) Condition B is that a dividend or interest on the securities is paid, as a result of the arrangement, to a person other than the person who is the lender under the arrangement.
  - (1C) Condition C is that –
    - (a) no provision is made for securing that the lender receives payments representative of the dividend or interest, or
    - (b) provision is made for securing that the lender receives –
      - (i) payments representative of the dividend or interest, and
      - (ii) another benefit in respect of the dividend or interest (including the release of the whole or part of any liability to pay an amount).”
- (3) In subsection (2) for paragraph (a) substitute –
  - “(a) were required, under the arrangement –
    - (i) in a case falling within paragraph (a) of subsection (1C), to pay the lender an amount representative of the dividend or interest, or
    - (ii) in a case falling within paragraph (b) of that subsection, to pay the lender an amount representative of the dividend or interest but deducting from that amount any payment mentioned in sub-paragraph (i) of that paragraph on which tax has been, or is to be, charged, and”.
- (4) Section 812 of CTA 2010 (deemed manufactured payments: stock lending arrangements) is amended as set out in subsections (5) to (7).
- (5) For subsection (1) substitute –
  - “(1) This section applies if conditions A to C are met.
  - (1A) Condition A is that there is a stock lending arrangement in respect of securities.
  - (1B) Condition B is that a dividend or interest on the securities is paid, as a result of the arrangement, to a person other than the person who is the lender under the arrangement.
  - (1C) Condition C is that –
    - (a) no provision is made for securing that the lender receives payments representative of the dividend or interest, or
    - (b) provision is made for securing that the lender receives –
      - (i) payments representative of the dividend or interest, and

- (ii) another benefit in respect of the dividend or interest (including the release of the whole or part of any liability to pay an amount).”
- (6) In subsection (2) for paragraph (a) substitute –
  - “(a) were required, under the arrangement –
    - (i) in a case falling within paragraph (a) of subsection (1C), to pay the lender an amount representative of the dividend or interest, or
    - (ii) in a case falling within paragraph (b) of that subsection, to pay the lender an amount representative of the dividend or interest but deducting from that amount any payment mentioned in sub-paragraph (i) of that paragraph on which tax has been, or is to be, charged, and”.
- (7) After subsection (6) insert –
  - “(7) This section has effect regardless of section 358 of CTA 2009 (exclusion of credits on release of connected companies debts) or any other provision of Part 5 of that Act (loan relationships) which prevents a credit from being brought into account.”
- (8) The amendments made by this section have effect in relation to cases in which a dividend or interest is paid, or is treated as paid, on or after 5 December 2012.

**EXPLANATORY NOTE**

**MANUFACTURED PAYMENTS: STOCK LENDING ARRANGEMENTS**

**SUMMARY**

1. This clause amends the Income Tax Act 2007 (ITA 2007) and the Corporation Tax Act 2010 (CTA 2010) to respond to tax avoidance schemes involving stock lending arrangements. These amendments block schemes where part of a manufactured payment is paid in the form of an intra-group loan write-off, or other non-taxable form, to avoid tax charges which would otherwise arise on the manufactured payment.

**DETAILS OF THE CLAUSE**

2. Subsection (1) amends section 596 of ITA 2007 as per subsections (2) and (3).
3. Subsection (2) substitutes subsection 1 of section 596 with a new subsection 596(1), which provides that section 596 applies if conditions A, B and C are met.
4. New subsections (1A) and (1B) set out conditions A and B which restate the previous conditions set out at section 596(1)(a) and (b) respectively.
5. New subsection (1C) sets out new condition C adds to the circumstances in which section 596 will apply by expanding the condition previously set out in section 596(1)(c). Subsection (1C) sets out the two different sets of circumstances for Condition C. The first is that no provision is made for making payments representative of the dividend or interest to the lender (subsection (1C)(a)). The second circumstance is that provision is made both for making payments representative of the dividend or interest (Section 1C (b)(i)) and another benefit, including the release of any liability to pay an amount (Section 1C (b)(ii)).
6. Subsection (3) replaces subsection (2)(a) from section 596 ITA 2007 with a new subsection 596 (2)(a).
7. New subsection 596(2)(a) sets out the consequences where Condition C is met because the case falls within either 596(1C)(a) or (b).
8. New subsection (2a)(i) provides that in a case falling within paragraph (1C)(a), the rules about manufactured payments apply as if

the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest.

9. New subsection (2a)(ii) provides that in a case falling within subsection (1C)(b), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest. This is after adjusting for any amount paid and falling within subsection (1C)(b)(i).
10. Subsection (4) provides for similar amendments to be made to section 812 CTA 2010 through subsections (5) to (7).
11. Subsection (5) substitutes subsection 1 of section 812 with a new subsection 812(1) which provides that section 812 applies if conditions A to C are met. Conditions A and B restate the previous conditions set out at section 812(1)(a) and (b) respectively.
12. Subsection (1C) provides a new condition C that adds to the circumstances in which section 812 will apply by expanding the condition previously set out in section 812(1)(c). Condition C is met in two different sets of circumstances, which are either that no provision is made for making payments representative of the dividend or interest to the lender (subsection (1C)(a)) or that provision is made both for making payments representative of the dividend or interest (subsection 1C(b)(i)) and another benefit, including the release of any liability to pay an amount (subsection 1C(b)(ii)).
13. Subsection (6) replaces subsection (2)(a) from section 812 CTA 2010 with a new subsection 812(2)(a).
14. New subsection 812(2)(a) sets out the consequences where either Condition C (a) or Condition C (b) because the case falls within either section 812(1C)(a) or (b).
15. New subsection (2a)(i) provides that in a case falling within paragraph (1C)(a), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest.
16. New subsection (2a)(ii) provides that in a case falling within subsection (1C)(b), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest, but after adjusting for any amount paid and falling within subsection (1C)(b)(i).

17. Subsection (8) is a commencement provision. It provides for the amendments made by this section to come into effect on or after 5 December 2012.

**BACKGROUND NOTE**

18. These changes close a tax avoidance scheme in the area of stocklending arrangements.
19. The scheme attempts to prevent a tax charge arising when a financial trader is involved in stock lending. In those circumstances a manufactured payment made to represent the dividend or interest arising on the securities which have been lent would be taxed as trading income.
20. Section 596 ITA 2007 and section 812 CTA 2010 apply where there is no provision for a manufactured payment to be paid to represent the dividends or interest received on the securities. In those circumstances, section 596 or section 812 apply so that a payment is deemed to be made to the lender, and the stock lender is taxed accordingly. The tax position of the borrower is not affected.
21. The scheme attempts to avoid that charge by arranging for some manufactured payment to be made, but also for part of the payment representing the dividend to be received in a non-taxable form. The new legislation will provide that when any benefit is received representing the dividend, then it will give rise to a charge on the stock lender as though an actual manufactured payment had been received.