HM Revenue
& Customs

Corporation tax: preventing abuse of late-paid interest rules

Who is likely to be affected?

Companies subject to corporation tax which are party to loans or deeply discounted securities from connected creditors in certain overseas territories.

General description of the measure

This measure repeals rules which require interest payable on loans to be relieved when paid rather than when accrued in certain circumstances. It also repeals parallel rules which apply to deeply discounted securities.

Policy objective

This measure removes an anti-avoidance rule which is no longer needed, and prevents artificial manipulation of the emergence of losses purely to obtain a tax advantage.

Background to the measure

The late-paid interest rules were intended to counter avoidance involving mismatches between relief for, and taxation of, interest. However, the anti-avoidance impact of the rule is now very limited, since its scope was restricted in 2009 to interest payable to connected tax haven companies.

In addition, some companies use the late interest rules to manipulate the emergence of tax losses, effectively sidestepping the group relief rules. Group relief rules are intended to allow surrender to other group companies of losses economically suffered in a period, but not unused losses brought forward from earlier periods.

Accordingly, the wide-ranging consultation on modernising the taxation of corporate debt and derivative contracts, announced at Budget 2013, included proposals for changes to these rules. The Government's response to the consultation was published on 10 December 2013, and a Technical Note providing an update and setting out priorities was published on 8 April 2014.

Other draft legislation for Finance Bill 2015 arising from the wider consultation will be published separately for comment on 10 December 2014. That legislation will include a regime-wide anti-avoidance rule for loan relationships, which will counter timing advantages in appropriate cases such as those originally targeted by the late-paid interest rules.

Detailed proposal

Operative date

The repeals will have effect in respect of new loans entered into on or after 3 December 2014. For loans entered into before 3 December 2014, the repeals will have effect in respect of interest accruing or discounts arising on or after 1 January 2016, unless material changes are made to the loan between 3 December 2014 and 31 December 2015, in which case the repeal will be effective from the date of the change.

Current law

The ‘late interest rule’ is in Chapter 8 of Part 5 Corporation Tax Act 2009 (CTA 2009). Sections 374, 375, 377 and 378 set out the four cases in which the rule applies: where a creditor and debtor are connected; where the creditor is a participator in a close company; where a party to a loan has a major interest in another; and where a loan is made by trustees of an occupational pension scheme.

The rule applies where interest is unpaid 12 months after the end of the period in which it accrued and, in the case of the first and third cases, only where the creditor is resident in a non-qualifying’ territory - broadly, an offshore tax haven. Where it applies, the interest is treated as accrued, and therefore relieved, only when actually paid.

A parallel rule applying to discounts on deeply discounted securities is in Chapter 12. Section 407 mirrors the first and third cases of the Chapter 8 rule.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to repeal sections 374 and 377, removing the first and third cases to which the Chapter 8 rule applies, and to repeal section 407.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	-	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	No impact on individuals or households has been identified. The measure is concerned with corporate taxpayers only. The measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	No impact on equalities has been identified.					
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses. No impact on civil society organisations is anticipated.					
Operational impact	There will be no significant operational impact on HM Revenue & Customs.					
Other impacts	<u>Small and micro business assessment</u>: no impact on small companies is anticipated. Other impacts have been considered and none have been identified.					

Monitoring and evaluation

The impact of this measure will be continuously monitored by way of information collected from companies' tax returns and regular contacts with businesses and other stakeholders.

Further advice

If you have any questions about this change, please contact Andy Stewardson on 03000 586085 (email: andy.stewardson@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Financial Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.