Explanatory Note

Clause 18: Distributions in a winding up

Summary

1. This measure introduces a new Targeted Anti-Avoidance Rule (TAAR) that will apply to certain company distributions in respect of share capital in a winding up. This TAAR will treat the distribution from a winding-up as if it were a distribution chargeable to Income Tax, where certain conditions are met. The TAAR applies to distributions made on or after 6 April 2016.

Details of the clause

2. Subsection (1) introduces new section 396B into the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

New section 396B: Distributions in a winding up

3. New section 396B(1) explains that a distribution in respect of shares in the winding up of a UK-resident company is a distribution where conditions A to C are met.

4. New section 396B(2) sets out condition A: the company has to be a close company (as defined by section 439 Corporation Tax Act 2010), or to have been a close company at some point in the two years prior to the winding up.

5. New section 396B(3) sets out condition B: that the person who receives the distribution is involved with the carrying on of a trade or activity that is similar to that of the trade or activity carried on by the wound up company. The individual may carry out the trade directly, through a company he or she controls, or through a person with whom he or she is connected.

6. New section 396B(4) and (5) set out condition C: that it is reasonable to assume that the winding up forms part of arrangements designed to reduce the person's income tax liability. The legislation makes clear that condition C will address in particular the question whether the person continues in some way the same or a similar trade or activity.

7. New section 396B(6) provides an exemption from the TAAR where the distribution received by the individual is either a repayment of share capital originally subscribed, or where it comprises only shares in a subsidiary of the wound up company, as would be the case in a "liquidation de-merger".

8. New subsections 396B(7) and (8) define "subsidiary" and "participator" as used in the section.

New section 404A: Distributions In a winding up

9. Subsection (2) introduces new section 404A into Chapter 4, Part 4 of ITTOIA, which mirrors

the provisions of new section 396B for distributions in respect of shares from a non-UK resident company (treating the non-UK resident company as close if it would have been close had it been resident in the UK).

10. The new section refers to a "dividend" rather than a "distribution", reflecting differences in the way dividends and distributions from non-UK resident companies are taxed.

11. Subsection (3) provides for commencement.

Background note

12. This new TAAR is being introduced to rationalise and improve the tax treatment of payments to members from companies. It will help ensure that the treatment of what is received better reflects the nature of the payments.

13. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk)