

Mr Chancellor of the Exchequer

**NEW CLAUSE 6: INTANGIBLE ASSETS: TAX
AVOIDANCE ARRANGEMENTS AND RELATED
PARTIES**

To move the following Clause-

‘(1) Schedule 29 to the Finance Act 2002 (c. 23) (gains and losses of a company from intangible fixed assets) is amended as follows.

(2) In paragraph 111 (tax avoidance arrangements to be disregarded)—

(a) in sub-paragraph (1) for the words following “in determining” substitute “whether a debit or credit is to be brought into account under this Schedule or the amount of any such debit or credit”, and

(b) in sub-paragraph (2)—

(i) for “under paragraph 9” in paragraph (a), and

(ii) for “under Part 4” in paragraph (b),

substitute “under this Schedule”.

(3) In paragraph 95(1) (meaning of “related party”: cases in which persons are related parties) at the end add—

“Case Four

P is a company and C is another company in the same group.”

(4) The amendments in this section—

(a) have effect in relation to the debits or credits to be brought into account for accounting periods beginning on or after 20 June 2003, and

(b) in relation to the debits or credits to be brought into account for any such period shall be deemed always to have had effect.

(5) For this purpose an accounting period beginning before, and ending on or after, that date is treated as if so much of that period as falls before that date, and so much of that period as falls on or after that date, were separate accounting periods.’.

EXPLANATORY NOTE

SUMMARY

1. New Clause 6 amends Schedule 29 of Finance Act 2002, which contains the new rules for the taxation of corporate intangible assets, to prevent companies from recycling “old” assets into the new regime.
2. The new regime introduced in Schedule 29 FA 2002 only applies to new assets created after 31 March 2002 and to assets purchased after then from unrelated parties. However, it has become clear that attempts are being made to bypass this restriction and bring pre April 2002 assets into the new regime.
3. Schemes of this type partly rely on a potential mismatch between the meaning of the term “related party” within the intangibles rules and the definition of a group for capital gains purposes. This could potentially allow two companies to be in the same group for capital gains purposes, and therefore to transfer assets with no capital gains tax consequences, while being unrelated parties for the intangibles rules - so that the transfer of an asset brings it within the new intangibles regime.
4. The schemes also depend on the fact that the anti avoidance rule in paragraph 111 of Schedule 29 FA 2002 does not extend to all debits and credits under Schedule 29, and that in particular it does not extend to cover the optional 4% treatment.
5. The changes will apply to all accounting periods beginning on or after 20 June 2003, or to transfers of assets after that date.

DETAILS OF THE CLAUSE

6. Subsection (1) of New Clause 6 provides that Schedule 29 of Finance Act 2002 is to be amended.
7. Subsection (2) of New Clause 6 sets out changes to be made to paragraph 111 of Schedule 29 FA 2002, which provides for tax avoidance arrangements to be disregarded.
8. Sub-paragraph 111(1) of Schedule 29 sets out the effect of the existence of tax avoidance arrangements. These are to be disregarded in determining the amount of certain debits and credits within Schedule 29. The debits are those under paragraph 9 (the amortisation and impairment deductions) and the credits are those under Part 4 (on the realisation of an asset).
9. As it currently stands, paragraph 111(1) does not extend to debits under paragraph 10, which provides that a company may, upon election, claim a tax deduction based on writing down the cost of an intangible asset at a fixed rate of 4% (rather than following the actual accounting treatment).
10. Subsection (2)(a) of New Clause 6 replaces the specific references in paragraph 111(1) by a more general reference, providing that tax avoidance arrangements will be disregarded in determining whether any debits or credits are to be brought into account under Schedule 29.
11. Sub-paragraph 111(2) of Schedule 29 defines tax avoidance arrangements. These are arrangements the main object, or one of the main objects, of which is either to obtain a larger debit under paragraph 9 of schedule 29 (including a debit where there would not otherwise be one), or to avoid having a credit brought into account (or to reduce the amount of a credit) under Part 4 of schedule 29.
12. Subsection 2(b) of New Clause 6 replaces the specific paragraph and part references in sub-paragraph 111(2) by more general references to “this schedule”.
13. The changes in subsection (2) of New Clause 6 have the effect of widening the anti-avoidance power to cover all debits and credits under Schedule 29 FA 2002.

14. Subsection (3) of New Clause 6 amends sub-paragraph 95(1) of Schedule 29 FA 2002, which sets out three cases in which a person is a related party of a company, by inserting an additional case, where both persons are companies which are members of the same group. A group of companies for the purpose of Schedule 29 is essentially defined as it is for capital gains purposes (though the wording is different).
15. Subsections (4) and (5) of New Clause 6 set out when and how the amendments will come into effect. They will apply to debits and credits to be brought into account for accounting periods starting on or after 20 June 2003] (that is, to future accounting periods) and will be considered always to have had effect for those period.
16. This means that tax relief claimed for debits and credits brought into account in past accounting periods which would have been within the scope of the changes had they been in force at the time is unaffected, but that companies will not be able to claim deductions in future accounting periods in respect of such debits and credits.
17. For accounting periods that straddle 20 June 2003, that is, current accounting periods, companies will be able to claim tax relief for the period of the accounting period up to 20 June 2003 for debits and credits arising from earlier transactions (whether these took place in a previous accounting period or in the current period before 20 June 2003).

BACKGROUND NOTE

18. The new regime for the taxation of companies' intangible assets was introduced, after extensive consultation, in Schedule 29 of Finance Act 2002. This provides a consistent and self contained set of rules for the taxation on an income basis of intangible assets created after 31 March 2002, and of assets acquired, from unrelated parties, after that date.
19. The new rules allow a company to claim tax deductions as it writes down the value of its assets in its accounts. As an alternative, it can elect to write down an asset at 4% per annum, regardless of the accounts.

20. In general, existing intangible assets at 31 March 2002 continue to be taxed under the old rules, as capital assets. Therefore, companies cannot claim tax deductions as they write down such assets in their accounts. (There are a number of specific exceptions to this, for example Lloyds capacity and certain telecommunications assets which are existing assets but still within the new regime).
21. Schedule 29 also treats an asset acquired from a related party as continuing to be an “existing asset”, so preventing group companies from shuffling assets to bring “old” assets into the “new” regime. This rule is reinforced by specific anti avoidance rules in paragraph 111 of Schedule 29.
22. There is now clear evidence that companies are seeking to overcome the restrictions in Schedule 29, by exploiting a perceived mismatch between the definition of related persons in the intangibles rules and the definition of a group for capital gains purposes as well as the fact that the anti avoidance rules in paragraph 111 of Schedule 29 do not extend to cover the optional 4% scheme. The proposed amendments therefore remove the mismatch and widen the anti avoidance power to ensure that it covers all debits and credits under Schedule 29.
23. The changes will apply to accounting periods starting on or after 20 June 2003, or to asset transfers after that date. Any company that has already undertaken transactions to which the amendments apply will not be able to claim a deduction in any future period (including accounting periods deemed to have commenced by virtue of subsection 5)
24. Any deduction which a company has claimed in a previous accounting period is unaffected. Relief for accounting periods that straddle 20 June 2003 will be apportioned.