

Mr Chancellor of the Exchequer

New Clause 5

To move the following Clause:-

(1) Section 75 of ICTA (expenses of management: companies with investment business) is amended as follows.

(2) After subsection (2) insert.

(2A) A deduction is not to be allowed under that subsection for any particular expenses of management if any part of those expenses is incurred directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure the allowance of a deduction (or increased deduction) under that subsection or any other tax advantage.

(2B) Subsection (2A) above does not apply if, as a result of paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose), the company incurring the expenses is not entitled to a relevant tax relief (within the meaning of that paragraph) in respect of, or referable to, the whole or any part of the expenses.

(2C) The reference in subsection (2A) above to expenses of management includes amounts treated by any provision as deductible under this section.

(3) After subsection (5) insert.

(5A) For the purposes of subsection (5)(a) above investments are not held for a business or other commercial purpose if they are held directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure the allowance of a deduction (or increased deduction) under subsection (1) above or any other tax advantage.

(4) After subsection (10) insert.

(11) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and “tax advantage” has the meaning given by section 840ZA.

(5) The amendments made by this section have effect in relation to accounting periods beginning on or after 20th June 2007, but have no effect in any case where the particular management expenses in question were paid before that date.

(6) In the case of an accounting period of a company beginning before, and ending on or after, that date, those amendments have effect as if, for determining the amounts that are deductible for the period under section 75(1) of ICTA, so much of the period as falls before that date, and the rest of it, were separate accounting periods.

EXPLANATORY NOTE

**NEW CLAUSE 5: RESTRICTION ON EXPENSES OF
MANAGEMENT**

SUMMARY

1. This new clause introduces an anti –avoidance rule into section 75 of the Income and Corporation Taxes Act 1988 (ICTA). It is based upon the principle that relief for “expenses of management” should only be available where a company has incurred genuine expenditure in the course of managing its investment business. The new rule will apply where arrangements produce a contrived deduction or tax advantage, or where any genuine expenses of managing the investment business are artificially increased.

DETAILS OF THE CLAUSE

2. New Clause 5(1) provides for section 75 Income and Corporation Taxes Act 1988 (“ICTA”) to be amended in accordance with sub-sections (2) to (6).
3. Sub-section (2) inserts three new sub-sections, section 75(2A), (2B) and (2C) into the ICTA.
4. New sub-section 75(2A) introduces a targeted anti-avoidance rule which disallows as a deduction from the profits of a company computed under the Taxes Acts, expenses of management where any part of those particular expenses were incurred as part of a scheme to avoid tax. Any expenses of management wholly unconnected to an avoidance scheme will continue to be eligible for relief.

5. New sub-section 75(2B) ensures that S75 and Schedule 23A, paragraph 7A are applied in a particular order to stop relief being given for manufactured payments in appropriate circumstances.
6. New sub-section 75(2C) ensures that where the Taxes Acts deem that any other expense is to be treated as deductible as an expense of management the new rule at section 75(2A) ICTA will apply to those deemed expenses.
7. Subsection (3) inserts new sub-section 75(5A) ICTA that emphasises that where assets are held for purposes that include avoiding tax, then that is not a commercial or business purpose.
8. Subsection (4) inserts new sub-section 75(11) ICTA that defines ‘tax advantage’ and provides a wide definition of ‘arrangements’ for the purpose of section 75 ICTA.
9. Subsection (5) is the commencement provision. The changes apply to any accounting periods beginning on or after [20] June 2007 but not to amounts paid before that date.
10. Subsection (6) explains that where an accounting period straddles the 20 June 2007 then it will be split into two periods for the purposes of determining the amount deductible for expenses of management. The period prior to 20 June 2007 will not be affected by the changes but the period on or after 20 June 2007 will be subject to the new rules.

BACKGROUND NOTE

11. For the purposes of Corporation Tax a deduction is allowed where a company has incurred “expenses of management” in respect of managing its investment business. This was

originally to ensure that companies with investment business were not disadvantaged compared to companies with trading business. The definition of ‘expenses of management’ relies on the principles established by case law.

12. The legislation was largely unchanged until 2004 when changes were made to make the regime more relevant to the modern commercial climate.
13. The 2004 changes included an unallowable purpose rule, which combined with a robust use of existing case law were expected to discourage the use of any avoidance schemes which created expenses of management.
14. The changes to the legislation outlined here are being introduced in response to the use of tax avoidance arrangements by a few groups that are designed to obtain relief for expenses of management in excess of any commercial expenses incurred by the company or group involved.
15. As well as introducing a new anti-avoidance rule, the new clause also extends the existing unallowable purpose rule. This rule is being strengthened to ensure that the anti-avoidance provisions catch both the deductions and the holding of assets for avoidance purposes.
16. The new clause will apply from 20 June 2007 but will not affect the treatment of any expenses paid before that date.