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Amendment 75

Clause 26, page 24, line 35, after ‘(9)’ insert ‘or (9A)’.

Amendment 76

Clause 26, page 24, line 39, at end insert ‘, or’.

Amendment 77

Clause 26, page 24, line 41, leave out from ‘period’ to end of line 45 and insert-

‘(9A) This subsection applies to an amount that is taken into account in determining the credits [or debits] to be brought into account by a company for the purposes of Chapter 2 of Part 4 of FA 1996 as respects a share in another company by virtue of section 91A or 91B of FA 1996 (shares treated as loan relationships).’

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EXPLANATORY NOTE**SUMMARY**

1. Clauses 24 to 31 and Schedule 3 provide new rules to prevent avoidance of UK tax through arbitrage. Arbitrage is the exploitation of differences between or within national tax codes. The clauses and schedule provide a set of circumstances in which deductions may be reduced or disallowed or under which receipts will be brought into charge. Clause 26 defines the scope of the tax arbitrage rules as they apply to receipts ('the receipts rule').
2. The amendments made to clause 26 ensure that there is no double charge on arrangements which could be subject to both the arbitrage clause and some of the financial avoidance clauses. The Government made it clear that there would be no such overlap between the identified clauses and the changes made by the amendments ensure that the legislation achieves this aim. This will provide companies with certainty over the application of the respective rules.

DETAILS

3. Subsection (9) of clause 26 defines condition (D), which is that the amount received by the company has not been taken into account in computing its own liability to corporation tax, or in computing the income portion of another company's corporation tax. Paragraph 9(c) includes within this definition, a charge under the avoidance involving financial arrangements rules provided by Clause 39 and Schedule 7 to this Bill. The effect of condition D is that a charge can only arise in respect of amounts that have not already been subject to tax.

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4. Amendments 75 and 76 to Clause 26 paragraph (9) are required to accommodate the creation of a new subsection (9A), which contains an amended version of the exemption previously provided by paragraph (9)(c).
5. Amendment 77 inserts the amended version as paragraph (9A). This paragraph ensures that where the receipt of a qualifying payment has been taken into account in computing a charge on another company under section 91A or section 91B of FA1996, then there will not be a second charge to tax under clause 27.

BACKGROUND NOTE

6. Arbitrage is the exploitation of differences between or within national tax systems. This can result, for example, in a tax deduction being given by both the UK and another country for the same expense (a double dip) or a deduction being given for a payment when tax on the corresponding receipt has been avoided. A significant number of disclosures under sections 306–319 of the Finance Act 2004 (the disclosure rules) identified arbitrage.
7. The new legislation will apply only if the arrangements have been entered into to reduce UK tax and only if HMRC issues a notice directing a company to make or amend its self-assessment taking into account the rule. When it does apply, deductions forming part of an arbitrage scheme will be denied to the extent of the arbitrage and certain receipts will become taxable.
8. Draft Guidance on the application of the new rules was issued by the Inland Revenue on 16 March 2005 and was updated on 26 May 2005. That guidance made it clear that double charges would not arise under the arbitrage rules and the specific parts of the financial avoidance rules that deal with similar schemes.