1 Post-cessation trade or property relief: tax-generated payments or events

(1) Part 4 of ITA 2007 (loss relief) is amended as follows.

(2) In section 96(7) (post-cessation trade relief), after paragraph (b) insert—

"(ba) section 98A (denial of relief for tax-generated payments or events),".

(3) After section 98 insert—

"98A Denial of relief for tax-generated payments or events

(1) Post-cessation trade relief is not available to a person in respect of a payment or an event which is made or occurs directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements (and, accordingly, no section 261D claim may be made in respect of the payment or event).

(2) For this purpose "relevant tax avoidance arrangements" means arrangements—

(a) to which the person is a party, and

(b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability as a result of the availability of post-cessation trade relief (whether by making a claim for that relief or a section 261D claim).

(3) In this section—

(a) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

(b) "section 261D claim" means a claim under section 261D of TCGA 1992."

(4) In section 125(6) (post-cessation property relief), after paragraph (b) insert—

"(ba) section 98A (denial of relief for tax-generated payments or events),".

(5) The amendments made by subsections (2) and (3) have effect in relation to—

(a) payments which are made on or after 12 January 2012 except where they are made pursuant to an unconditional obligation in a contract made before that date, or

(b) events which occur on or after that date.

(6) The amendment made by subsection (4) has effect in relation to—

(a) payments which are made on or after 13 March 2012 except where they are made pursuant to an unconditional obligation in a contract made before that date, or

(b) events which occur on or after that date.

(7) In subsections (5)(a) and (6)(a) "an unconditional obligation" means an obligation which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

(8) For the purposes of subsections (5)(b) and (6)(b) section 98 of ITA 2007 applies for determining when an event occurs.

2 Property loss relief against general income: tax-generated agricultural expenses

(1) Chapter 4 of Part 4 of ITA 2007 (losses from property businesses) is amended as follows.

(2) In section 117(3) (overview of Chapter), for "section 127A" substitute "sections 127A and 127B".

(3) In section 120(7) (deduction of property losses from general income), at the end insert "and section 127B (no relief for tax-generated agricultural expenses)".

(4) After section 127A insert—

"127B No relief for tax-generated agricultural expenses

(1) This section applies if—

(a) in a tax year a person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership),

(b) the business has a relevant agricultural connection for the purposes of section 120 (see section 123(3) to (7)), and

(c) any allowable agricultural expenses deducted in calculating the loss arise directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements.

(2) No property loss relief against general income may be given to the person for so much of the applicable amount of the loss as is attributable to expenses falling within subsection (1)(c).

(3) For the purposes of subsection (2), the applicable amount of the loss is to be treated as attributable to expenses falling within subsection (1)(c) before anything else.

(4) In subsection (1) "relevant tax avoidance arrangements" means arrangements—

(a) to which the person is a party, and

(b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability by means of property loss relief against general income.

(5) In subsection (4) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(6) In this section "the applicable amount of the loss" has the meaning given by section 122 and "allowable agricultural expenses" has the meaning given by section 123."

(5) The amendments made by this section have effect in relation to expenses arising directly or indirectly in consequence of, or otherwise in connection with—

(a) arrangements which are entered into on or after 13 March 2012, or

(b) any transaction forming part of arrangements which is entered into on or after that date.

(6) But those amendments do not have effect where the arrangements are, or any such transaction is, entered into pursuant to an unconditional obligation in a contract made before that date.

(7) "An unconditional obligation" means an obligation which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

EXPLANATORY NOTE

POST-CESSATION TRADE OR PROPERTY RELIEF: TAX-GENERATED PAYMENTS OR EVENTS

SUMMARY

1. This clause provides for changes to the rules for "post-cessation trade relief" and "post-cessation property relief" which can be claimed by a person after a business has ceased. The changes are designed to prevent tax-generated costs being available for relief against the person's other taxable income or capital gains. The changes apply to post-cessation trade relief with effect from 12 January 2012 and to post-cessation property relief with effect from 13 March 2012.

DETAILS OF THE CLAUSE

2. Subsection (2) adds section 98A of the Income Tax Act 2007 (ITA) to the list of sections with which section 96 of ITA needs to be read.

3. Subsection (3) inserts new section 98A of ITA (Denial of relief for tax-generated payments or events).

4. New section 98A(1) provides that no post-cessation trade relief (including relief by way of claim under section 261D of the Taxation of Chargeable Gains Act 1992) is available to a person in respect of a payment or an event which is made or occurs in consequence of, or in connection with, relevant tax avoidance arrangements.

5. New section 98A(2) defines "relevant tax avoidance arrangements" for the purposes of new section 98A(1).

6. New section 98A(3) defines "arrangements" and "section 261D claim" for the purposes of new section 98A.

7. Subsection (4) adds section 98A of ITA to the list of sections which apply to post-cessation property relief in the same way as for post-cessation trade relief.

8. Subsections (5) and (6) provide commencement rules.

9. Subsection (7) defines "an unconditional obligation" for the purposes of subsections (5) and (6).

BACKGROUND NOTE

10. The Government has become aware of avoidance activity that relies on creating contrived costs in order to claim post-cessation trade relief. This puts at risk substantial amounts of tax.

11. The Exchequer Secretary to the Treasury (David Gauke) announced in a written statement on 12 January 2012 that legislation would be introduced with effect from that date to prevent post-cessation trade relief being available where the relief arises from arrangements and a main purpose of the arrangements is to obtain a tax reduction resulting from post-cessation trade relief. A further announcement was made on 13 March 2012 extending the restriction to post-cessation property relief with effect from that date.

EXPLANATORY NOTE

PROPERTY LOSS RELIEF AGAINST GENERAL INCOME: TAX-GENERATED AGRICULTURAL EXPENSES

SUMMARY

1. This clause provides for changes to the rules for the losses that can be claimed by a person from a property business with a relevant agricultural connection. The changes are designed to prevent tax-generated agricultural expenses being available for relief against the person's other taxable income. These changes were announced on 13 March 2012 and will apply on and after that date.

DETAILS OF THE CLAUSE

2. Subsection (2) adds section 127B of the Income Tax Act 2007 (ITA) to sections restricting relief under Chapter 4 of ITA.

3. Subsection (4) inserts new section 127B of ITA (No relief for tax-generated agricultural expenses).

4. New section 127B(1) provides that this section applies if a person makes a loss in a tax year from carrying on a property business with a relevant agricultural connection, either in a sole capacity or as a partner, and that loss arises directly or indirectly in consequence of, or otherwise in connection with relevant tax avoidance arrangements.

5. New section 127B(2) provides that there is no property loss relief for the loss falling within section 127B(1).

6. New section 127B(4) defines "relevant tax avoidance arrangements" for the purposes of section 127B.

7. New section 127B(5) defines "arrangements" for the purposes of section 127B(4).

8. New section 127B(6) defines "the applicable amount of the loss" and "allowable agricultural expenses" for the purposes of section 127B

9. Subsections (5) and (6) provide commencement rules

10. Subsection (7) defines "an unconditional obligation" for the purposes of subsection (6).

BACKGROUND NOTE

11. A person who makes a loss from a property business with a relevant agricultural connection may claim relief against their other income. This is known as “property loss relief”.

12. The Government has become aware of avoidance activity that relies on creating contrived costs in order to claim property loss relief. This puts at risk substantial amounts of tax.

13. The Exchequer Secretary to the Treasury (David Gauke) announced in a written statement on 13 March 2012 that legislation would be introduced with effect from that date to prevent property loss relief being available where the relief arises from arrangements and a main purpose of the arrangements is to obtain a tax reduction resulting from property loss relief from a property business with a relevant agricultural connection.

Property loss relief against general income and Post-cessation property relief - anti-avoidance

Who is likely to be affected?

Persons who are party to arrangements intended to provide a reduction in tax liability by means of losses or reliefs from property businesses set against general income or capital gains.

General description of the measure

This measure will introduce targeted anti-avoidance rules ("TAARs") that will deny property loss relief against general income for agricultural expenses and post-cessation property relief where expenses, or a payment or event for which relief is sought, arises from relevant tax avoidance arrangements.

Policy objective

This measure will support fairness in the tax system by protecting the Exchequer from loss of tax as a result of avoidance arrangements intended to exploit agricultural property loss relief or post cessation property relief. It will support the HM Revenue & Customs (HMRC) anti-avoidance strategy to prevent, deter and counter tax avoidance.

Background to the measure

This measure was announced by Written Ministerial Statement on 13 March 2012.

Detailed proposal

Operative date

In general the TAARs will apply to payments made, and events occurring, on or after 13 March 2012.

Current law

Section 120 of the Income Tax Act 2007 (ITA) allows a person to claim relief against general income for a loss in a property business which has a relevant agricultural connection ("agricultural property loss relief").

Agricultural property loss relief can be claimed for the year in which the property business loss is suffered or in the next tax year.

Section 122 of ITA sets out how the amount that qualifies for agricultural property loss relief is calculated.

Section 123 of ITA sets out when a property business has a relevant agricultural connection so that the loss qualifies for agricultural property loss relief.

Section 125 of ITA allows a person to claim for post-cessation property relief if, after permanently ceasing to carry on a UK property business, the person makes a qualifying payment, or a qualifying event occurs in relation to a debt owed to the person, and the payment is made or the event occurs within 7 years of the cessation.

Post-cessation property relief may be claimed as a deduction in calculating the person's net income for the year in which the payment is made, or, in general, the year in which the qualifying event occurs.

Qualifying payments are defined in section 97 of ITA. They include payments relating to defective work and the costs of collecting trade debts.

Under section 98 of ITA a qualifying event occurs when a trade debt is released or a trade debt proves to be bad.

Sections 99 and 100 of ITA contain rules that reduce the relief for unpaid property business expenses and where relief is given, or available, under any other provisions of the Income Tax Acts.

Section 126 of ITA allows a person who cannot deduct all of an amount claimed for post-cessation property relief to treat the unused part as an allowable loss for capital gains tax purposes.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to amend Part 4 of ITA to deny agricultural property loss relief and post-cessation property relief to a person for expenses arising, or a payment or an event which is made or occurs, directly or indirectly in consequence of, or in connection with, relevant tax avoidance arrangements. These are arrangements to which the person is party and the main purpose, or one of the main purposes, is the obtaining of a reduction in tax liability as a result of agricultural property loss relief or post-cessation property relief. The term "arrangements" is widely defined.

The amendments will apply to expenses arising and payments made, or events occurring, on or after 13 March 2012 except where expenses arise or a payment is made pursuant to an unconditional obligation in a contract made before that date.

Summary of impacts

<table>
<tr><td rowspan="3">Exchequer impact (£m)</td><td>2011-12</td><td>2012-13</td><td>2013-14</td><td>2014-15</td><td>2015-16</td></tr>
<tr><td>Nil</td><td>Nil</td><td>Nil</td><td>Nil</td><td>Nil</td></tr>
<tr><td colspan="5">This measure supports the Exchequer in its commitment to protect revenue.</td></tr>
<tr><td>Economic impact</td><td colspan="5">This measure is not expected to have any significant economic impacts because it will only effect contrived transactions attempting to exploit agricultural property loss relief or post cessation property relief.</td></tr>
<tr><td>Impact on individuals and households</td><td colspan="5">This measure only applies to those persons seeking to exploit agricultural property loss relief or post cessation property relief and is not therefore expected to have any impact on business. Any impact on administrative burdens will only affect those involved in the avoidance.</td></tr>
</table>

Equalities impacts	This measure only applies to those persons seeking to exploit agricultural property loss relief or post cessation property relief and is not therefore expected to impact on any equality group.
Impact on business including civil society organisations	This measure only applies to those persons seeking to exploit agricultural property loss relief or post cessation property relief and is not therefore expected to have any impact on business.
Operational impact (£m) (HMRC or other)	HMRC will not incur any additional operational costs implementing this measure.
Other impacts	Small firms' impact test: there will be no impact on small firms.

Monitoring and evaluation

HMRC will monitor taxpayers' tax returns to ensure that the avoidance that these changes are intended to counter does not occur.

Further advice

If you have any questions about this change, please contact Allana Sheil on 020 7147 2565 (email: allana.sheil@hmrc.gsi.gov.uk) or Brian Stokes on 020 7147 2546 (email: brian.stokes@hmrc.gsi.gov.uk)

Declaration

David Gauke MP, Exchequer 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.