

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

Who is likely to be affected?

Persons who are party to arrangements intended to provide a reduction in tax liability by means of post-cessation trade relief.

General description of the measure

This measure will introduce a targeted anti-avoidance rule ("TAAR") that will prevent post-cessation trade relief from being available where 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 post-cessation trade relief. It will support HM Revenue & Customs anti-avoidance strategy to prevent, deter and counter tax avoidance.

Background to the measure

This measure was announced by Written Ministerial Statement on 12 January 2012.

Detailed proposal

Operative date

In general the TAAR will apply to payments made, and events occurring, on or after 12 January 2012.

Current law

Section 96 of the Income Tax Act 2007 (ITA) allows a person to claim for post-cessation trade relief if, after permanently ceasing to carry on a trade, profession or vocation, 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 trade 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 and are broadly payments made in remedying, or by way of damages for: defective work; legal and professional fees incurred in defending claims about defective work; payments for insuring against claims for defective work; and the costs of collecting trade debts.

Qualifying events are defined in section 98 of ITA and are broadly the release of a trade debt under a statutory insolvency arrangement and a trade debt proving to be bad. A qualifying event occurs when the debt is released or the debt proves to be bad.

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

Section 101 of ITA allows a person who cannot deduct all of an amount claimed for post-cessation trade 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 post-cessation trade relief, and capital gains relief, to a person for 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 post-cessation trade relief. The term "arrangements" is widely defined.

The amendments will apply to payments made, or events occurring, on or after 12 January 2012 except where a payment is made pursuant to an unconditional obligation in a contract made before that date.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	-	-	-	-
	This measure is not expected to have an Exchequer impact. It supports the Exchequer in its commitment to protect revenue.				
Economic impact	This measure is not expected to have any significant economic impacts because it will only effect contrived transactions attempting to exploit post-cessation trade relief.				
Impact on individuals and households	This measure will not have a significant impact on individuals and households as the changes relate only to those persons seeking to exploit post-cessation trade relief.				
Equalities impacts	This measure only applies to those persons seeking to exploit post-cessation trade 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 post-cessation trade relief and is not therefore expected to have any impact on business.				
Operational impact (£m) (HMRC or	HMRC will not incur any additional operational costs implementing this measure.				

other)	
Other impacts	None.

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 Mark Anderson on 020 7147 2621 (email: mark.anderson@hmrc.gsi.gov.uk) or Hugh Dorey on 020 7147 3850 (email: hugh.dorey@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.

1 Post-cessation trade 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) The amendments made by this section 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 12 January 2012 (and section 98 of ITA 2007 applies for the purposes of this paragraph for determining when the event occurs).
- (5) In subsection (4)(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).

EXPLANATORY NOTE

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

SUMMARY

1. This clause provides for changes to the rules for “post-cessation trade relief” which can be claimed by a person after a trade, profession or vocation 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. These changes were announced on 12 January 2012 and will apply on and after that date.

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) provides commencement rules.
8. Subsection (5) defines “an unconditional obligation” for the purposes of subsection (4).

BACKGROUND NOTE

9. A person who incurs certain costs or bad debts directly related to a trade, profession or vocation that has ceased may claim relief against their other income and capital gains. This is known as “post-cessation trade relief”.
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

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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.