
NOTICES OF AMENDMENTS

given on

Thursday 6 June 2013

Public Bill Committee

FINANCE BILL

Mr David Gauke

65

Schedule 28, page 373, line 9, leave out from '3B' to 'loans' in line 10 and insert 'makes provision about the treatment of certain repayments and return payments made in respect of'.

Mr David Gauke

66

Schedule 28, page 375, line 18, leave out from beginning to end of line 12 on page 376 and insert—

'464C Treatment of certain repayments and return payments

- (1) Where—
 - (a) within any period of 30 days—
 - (i) the qualifying amount of repayments made to a close company in respect of one or more chargeable payments made by the company to a person totals £5,000 or more, and
 - (ii) the available amount of the relevant chargeable payments made by the company to the person or an associate of the person totals £5,000 or more, and
 - (b) the relevant chargeable payments are made in an accounting period subsequent to that in which the chargeable payments mentioned in paragraph (a)(i) were made, the qualifying amount of the repayments, so far as not exceeding the available amount of the relevant chargeable payments, is to be treated for the purposes of this Chapter as a repayment of the relevant chargeable payments.
- (2) A chargeable payment is a relevant chargeable payment for the purposes of subsection (1) if (or to the extent that) it is not repaid within the period of 30 days mentioned in that subsection.
- (3) Where—
 - (a) immediately before a repayment is made in respect of one or more chargeable payments made by a close company to a person, the total amount amount owed to the company by the person in respect of chargeable payments is £15,000 or more,
 - (b) at the time the repayment is made, arrangements had been made for one or more chargeable payments to be made to replace some or all of the amount repaid, and

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- (c) the available amount of the chargeable payments made by the company to the person or an associate of the person under the arrangements totals £5,000 or more,
the qualifying amount of the repayment, so far as not exceeding the available amount of the chargeable payments mentioned in paragraph (c), is to be treated for the purposes of this Chapter as a repayment of those chargeable payments.
- (4) An amount contained in a chargeable payment is an available amount—
- (a) for the purposes of subsection (1), to the extent that no repayment has been treated as made in respect of it by the previous operation of that subsection, and
- (b) for the purposes of subsection (3), to the extent that no repayment has been treated as made in respect of it—
- (i) by the operation of subsection (1), or
- (ii) by the previous operation of subsection (3).
- (5) An amount contained in a repayment is a qualifying amount to the extent that it has not been treated by the previous operation of this section as a repayment of a chargeable payment.
- (6) This section does not apply in relation to a repayment which gives rise to a charge to income tax on the participator or associate by reference to whom the loan, advance or benefit was a chargeable payment.
- (7) The Treasury may by order vary a sum specified in subsection (1) or (3).
- (8) An order under subsection (7) may contain incidental, supplemental, consequential and transitional provision and savings.’

Mr David Gauke

Schedule 28, page 376, line 15, leave out ‘464C(4)’ and insert 464C(1) and (3)’. 67

Mr David Gauke

Schedule 28, page 376, line 18, leave out ‘464C(4)’ and insert 464C(1) or (3)’. 68

Mr David Gauke

Schedule 28, page 376, line 23, leave out ‘464C(4)’ and insert ‘464C(1) or (3)’. 69

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EXPLANATORY NOTE

CLAUSE 76 SCHEDULE 28: CLOSE COMPANIES

AMENDMENTS 65, 66, 67, 68 and 69

SUMMARY

1. Clause 76 and Schedule 28 introduce changes to the close company loans to participator rules with effect from their announcement on 20 March 2013. The proposed amendments will ensure that the new rules in new section 464C are more closely targeted at repayments which do not remain with the company for an enduring period.

DETAILS OF THE AMENDMENT

2. Amendment 1 provides for Chapter 3B to operate by dictating how certain repayments and return payments are treated rather than by restricting the relief itself.
3. Amendment 2 replaces section 464C of the original clause with a new section 464C.
4. New subsection 464C(1) tightens the scope of the rules whilst maintaining the basic principles of the original section as follows:
5. A company must consider whether during any period of 30 days it:
 - receives repayments which:
 - repay a payment chargeable under section 455 Corporation Tax Act 2010 (CTA2010) or section 464A CTA2010;
 - have not been matched with a chargeable payment under s464C previously; and
 - total at least £5,000; and

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- makes new chargeable payments (which have not previously been matched with a repayment under section 464C):
 - in an accounting period which is later than the accounting period in which the original chargeable payment was made;
 - to the same person or their associate.

For the subsection to apply, the repayments and new chargeable payments may be in the same accounting period, but the new chargeable payments must be made in a later accounting period than the original chargeable payments.

6. If these conditions are satisfied, then the repayments are matched as far as possible with the new chargeable payments – repayments are available to set off against the original chargeable payments only to the extent the repayments are in excess of the new chargeable payments.
7. Subsection 464C(2) determines which new chargeable payments should be taken into account when considering the thirty day period – new chargeable payments which are repaid within the thirty day period under consideration are not taken into account.
8. Subsection 464C(3) tightens the scope of the rule which considers whether a repayment is made under arrangements which result in a further amount being paid to the participant. If the conditions are met, then the repayment is to be treated as far as possible as a repayment of the new chargeable payment rather than the original chargeable payment.

Example 1:

A Ltd lends a participant £20,000 which is still outstanding at the end of the accounting period. 35 days before the section 455 tax becomes due and payable, the participant receives a further £25,000 payment from the company. The original £20,000 is repaid using £20,000 of the £25,000 new loan.

It is likely in this situation that the repayment of £20,000 would be treated as a repayment of £20,000 of the new £25,000 loan so the original loan would be treated as not repaid and so the section 455 tax would become due and payable.

Example 2:

B Ltd lends a participant £30,000 which is still outstanding at the end of the accounting period. During the nine month period leading up to the due and payable date, the full amount is repaid using a 40 day bank loan. The bank loan is repaid using a further loan of £30,000 from the company.

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There are clear arrangements here and so the original loan would be treated as not repaid and so the section 455 tax would become due and payable unless a further repayment was made.

9. Subsections 464C(4) and (5) ensure that repayments and new chargeable payments are not matched more than once under these tests. If a repayment and chargeable payments have been matched under a previous operation of either subsection 464C(1) or subsection 464C(3), the repayments and chargeable payments will in effect be ignored for further operations of those subsections. Further, for any repayment/chargeable payment, consideration should be given as to whether the rule in section 464C(1) applies before consideration as to whether the rule in section 464C(3) applies.
10. Subsection 464C(6) applies to disregard any repayments which give rise to an income tax charge from consideration by this section. This means that the majority of dividends and remuneration presented purely as book entries can be ignored when applying section 464C.
11. Subsections 464C(7) and (8) allows the de minimis limits to be effectively varied by Treasury Order.
12. Amendments 3 to 5 are consequential amendments following on from the above.

BACKGROUND

13. Clause 76 amends the close company loans to participator legislation to tackle avoidance by exploitation of the rules.
14. These Government amendments are in response to representations that the current wording of the Bill captures transactions which are not avoidance.
15. These Government amendments make changes which more closely target the rules at situations where a charge under section 455 or s464A is avoided because a repayment is replaced by a further chargeable payment in a very short period of time or under arrangements to replace the original chargeable payment.