Written Ministerial Statement

TAX MEASURES

The Exchequer Secretary to the Treasury (Mr David Gauke): The Government is fully committed to tackling tax avoidance and will take necessary steps to protect the Exchequer and maintain fairness in the tax system.

The Government is therefore acting today to tackle two aggressive tax avoidance schemes that have been disclosed by a bank to HM Revenue and Customs. By acting immediately, the Government will ensure the payment of over half a billion pounds in tax, protect further billions of tax from being lost and maintain fairness in the tax system.

Debt buybacks

The first scheme seeks to exploit corporation tax rules that apply to releases of debt. Normally a debtor company is taxed on the profit that arises when a liability is released for less than the amount borrowed, but special rules apply to connected companies. In such cases, a tax charge arises where a company connected to the debtor company buys the debt from the original creditor, or where debt is held between companies that become connected. These rules were amended in Finance Act 2010 to block schemes under which banks bought back their issued debt that was trading at a discount in the market. When closing these previous attempts by companies to profit from buying back their own debt without being taxed, the Government at the time made clear in two Written Ministerial Statements that it expected such profits to be subject to corporation tax.

Despite these clear statements, the bank has now entered into a scheme using contrived arrangements that once again seeks to ensure that the profit on a buyback of such debt is not subject to corporation tax and therefore that a substantial amount of tax, of around three hundred million pounds, is avoided.

The Government will amend these rules in Finance Bill 2012, effective from today, so that the legislation in question cannot be circumvented in future. It will also make retrospective amendments to the legislation in relation to debt acquisitions on or after 1 December 2011 to ensure the bank, and any other company that has engaged in a similar scheme in the same period, is taxed as it should be on this transaction. This is not action that the Government is taking lightly. But the potential tax loss from this scheme and the history of previous abuse in this area, means that the Government believes that this is a circumstance where action to change the legislation with full retrospective effect is justified to ensure that the system is fair for all and that those who seek to benefit from this aggressive avoidance do not get an unfair advantage.

The bank has adopted the Code of Practice which contains a commitment not to engage in tax avoidance. The Government is clear that this not a transaction that a bank that has adopted the Code should be undertaking.

The Protocol on unscheduled announcements of changes in tax law published by the Government at Budget 2011 states that ‘changes to tax legislation where the change takes effect from a date earlier than the date of announcement will be wholly exceptional’. The Government views the avoidance outlined here and the circumstances as being a ‘wholly exceptional’ case as envisaged by the Protocol.

The draft legislation, Explanatory Note and Technical Note published today will form part of Finance Bill 2012 and will be available on the HMRC website.

Authorised Investment Funds

The second avoidance scheme seeks to exploit provisions of the Authorised Investment Fund (AIF) regulations to generate the repayment of tax (whether directly or through set off against other liabilities) that has never been paid.

Legislation to block this scheme, which is effective from today's date, has been made by regulations and will be available at legislation.gov.uk.

The Government has acted on a number of occasions in the past to block avoidance schemes exploiting both these areas of the law. The previous action and this Government's action in the present case makes it clear that the Government considers that certain contrived arrangements – these are arrangements involving financial products designed to create tax credits that can be repaid or offset against a bank's other income where the tax in question has not been paid, or to avoid being taxed on profits on buyback of the bank's own debt – are wholly unacceptable, against the intentions of Parliament and the spirit of the law.

Ministers will consider closing any future avoidance schemes involving such arrangements with full retrospective effect to ensure that the system is fair for all and that those that seek to benefit from this aggressive tax avoidance do not get an unfair advantage.

HM Treasury
27 February 2012