



Avoidance schemes involving the transfer of corporate profits

Who is likely to be affected?

Groups of companies using tax avoidance arrangements in order to transfer profits.

General description of the measure

The measure blocks tax avoidance arrangements where profits are transferred between companies in the same group for tax avoidance purposes. It does not apply to any arrangement falling within section 695A of the Corporation Tax Act 2009 (CTA 2009) which came into effect from 5 December 2013 and relates specifically to derivative contracts, but it does apply to any arrangements that have been put in place to circumvent that provision.

Policy objective

This measure supports the Government's objectives of promoting fairness and tackling avoidance in the tax system. It ensures that where profits are transferred between companies for tax avoidance purposes, then corporation tax will be charged as though the profits had not been transferred.

Background to the measure

At Autumn Statement 2013, the Government announced a measure, with effect from 5 December 2013, to block avoidance schemes where deductions are claimed for payments between companies in the same group under derivative contracts which are linked to company profits.

This new measure complements the Autumn Statement 2013 (AS13) measure, as a broader response to arrangements that have the same economic characteristics as those affected by the AS13 measure but using a mechanism other than a derivative contract.

Detailed proposal

Operative date

This measure will apply to payments made on or after 19 March 2014 arising from arrangements entered into on any date.

Current law

The tax treatment in respect of restriction of deductions for dividends and other distributions is set out in Chapter 1, Part 20 of CTA 2009.

Section 695A denies relief for a payment that is, in substance, a payment made out of profits after they have been earned. That measure was a direct response to an arrangement entered into by certain groups that had been using swaps to transfer UK profit out of the UK tax net.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to create a new section 1305A in Chapter 1, Part 20 of CTA 2009 which will provide that when in substance, the profits of a group company are transferred to a different group company and a main purpose of the arrangements is to secure a tax advantage (whether by circumventing section 695A or otherwise) then for tax purposes the transfer will be regarded as not having taken place.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	+60	+80	+80	+85	+75
	These figures are set out in Table 2.1 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Budget.				
	This measure supports the Exchequer in its commitment to protect revenue				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals and households	This measure will have no impacts on individuals and households – it only affects corporations.				
Equalities impacts	There are no impacts on any group which shares a protected characteristic.				
Impact on business including civil society organisations	This measure will have no impact on business and civil society organisations who are undertaking normal commercial transactions; it will only impact on the small number of businesses that are using the avoidance schemes.				
Operational impact (£m) (HMRC or other)	The costs to HM Revenue & Customs will be negligible.				
Other impacts	Other impacts have been considered and none have been identified.				

Monitoring and evaluation

The measure will be monitored through monitoring of disclosures of new avoidance schemes to circumvent the measure, and through regular communication with affected taxpayers and practitioners.

Further advice

If you have any questions about this change, please contact Steven Tovey on 03000 542532 (email: steven.tovey@hmrc.gsi.gov.uk) or contact Chris Murrice on 03000 585953 (email: chris.murrice@hmrc.gsi.gov.uk).

1 Avoidance schemes involving the transfer of corporate profits

- (1) In Chapter 1 of Part 20 of CTA 2009 (general calculation rules: restriction on deductions), after section 1305 insert—

“1305A Avoidance schemes involving the transfer of corporate profits

- (1) This section applies if—
- (a) two companies (“A” and “B”) are party to any arrangements (whether or not at the same time),
 - (b) A and B are members of the same group,
 - (c) the arrangements result in what is, in substance, a payment (directly or indirectly) from A to B of all or a significant part of the profits of the business of A or of a company which is a member of the same group as A or B (or both) (“the profit transfer”), and
 - (d) the main purpose or one of the main purposes of the arrangements is to secure a tax advantage for any person involving the profit transfer (whether by circumventing section 695A (disguised distribution arrangements: derivative contracts) or otherwise).
- (2) A’s profits are to be calculated for corporation tax purposes as if the profit transfer had not occurred.
- (3) Accordingly—
- (a) if (apart from this section) an amount relating to the profit transfer would be brought into account by A as a deduction in that calculation, no deduction is allowed in respect of that amount, and
 - (b) A’s profits are to be increased by so much of the amount of the profit transfer as is not an amount to which paragraph (a) applies (whether or not the profits transferred would be A’s profits apart from the arrangements).
- (4) For the purposes of this section a company is a member of the same group as another company if it is (or has been) a member of the same group at a time when the arrangements mentioned in subsection (1) have effect.
- (5) Where in relation to arrangements involving one or more derivative contracts the requirements of section 695A(1)(a) to (e) are met, nothing in this section applies in relation to any debit in respect of any of those contracts.
- (6) In this section—
- “arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;
 - “group” has the meaning given by section 357GD of CTA 2010;
 - “tax advantage” has the meaning given by section 1139 of CTA 2010.”
- (2) The amendment made by this section has effect in relation to payments made on or after 19 March 2014.

EXPLANATORY NOTE

AVOIDANCE SCHEMES INVOLVING THE TRANSFER OF CORPORATE PROFITS

SUMMARY

1. This clause of the Corporation Tax Act 2009 (CTA2009) stops tax avoidance arrangements where arrangements are entered into to transfer profits between companies in the same group for tax avoidance reasons. It does not apply to any arrangement falling within the new section 695A of CTA2009 (introduced in Finance Bill 2014 and proposed to come into effect from 5 December 2013) which relates specifically to arrangements involving derivative contracts, but it does apply to arrangements that have been put in place to circumvent that provision.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces a new section 1305A into Chapter 1 of Part 20 of the Corporation Tax Act 2009.

3. Section 1305A(1) sets out the circumstances in which section 1305A applies. These circumstances are where the conditions set out in subsections (1)(a) to (1)(d) are met. However, section 1305A(5) provides that section 1305A will not apply to arrangements which are caught by section 695A CTA 2009.

4. Section 1305A(1)(a) sets out the first condition, which is that two companies “A” and “B” are party to arrangements whether or not at the same time. Arrangements are defined in subsection 1305A (6) as including any scheme, arrangement or understanding, whether or not legally enforceable.

5. Section 1305A(1)(b) sets out the second condition, which is that company A and company B are members of the same group. Section 1305A(4) sets out when companies are in the same group for the purposes of section 1305A.

6. Section 1305A(1)(c) sets out the third condition which is that the arrangement results in what is in substance a payment from A to B of all, or a significant part of, the profits of the business of A or of a company which is a member of the same group as A or B or both. This is called the “profit transfer” and can be either direct or indirect.

7. Section 1305A(1)(d) sets out the fourth condition, which is that a main purpose of the arrangement must be to secure a tax advantage. ‘Tax advantage’ here takes its meaning from section 1139 of the Corporation Tax Act 2010.

8. Section 1305A(2) provides that for the purposes of corporation tax the profits of company A are to be calculated as though no profit transfer had occurred.

9. Section 1305A(3)(a) denies any deduction in respect of the profit transfer and section 1305A(3)(b) applies to all or part of the profit transfer not covered by subsection (3)(a) and states that the profits of A must be increased by the amount of the profit transfer.

10. Subsection (2) of Clause X is a commencement provision and provides that the legislation has effect in relation to payments made on or after 19 March 2014.

BACKGROUND NOTE

11. Section 1305A applies a tax avoidance test to any arrangements entered into for what is in substance a transfer of profit between companies in the same group.

12. The measure follows the announcement of section 695A CTA 2009 on 5 December 2013, to be introduced in Finance Bill 2014 with effect from the date of announcement.

13. This measure does not apply to transactions that fall within section 695A CTA2009, which closes down an avoidance scheme. In the scheme, a company enters into a derivative contract known as a total return swap, with a parent company or another group company, generally located in a tax haven. Under the contract, all of the profits of the company are paid away in return for much smaller payments back. A deduction is claimed for the payment under the contract, leaving little or no profit chargeable to tax.

14. Section 1305A in contrast applies irrespective of the mechanism by which profits are transferred and is therefore not limited to payments under a total return swap or other derivative. It can apply to a wider range of arrangements than section 695A but unlike that section is subject to a test which requires the arrangements to have a tax avoidance purpose.