

EXPLANATORY NOTE

AMENDMENTS 32 TO 38 TO CLAUSES 212 & 222 AND SCHEDULE 28: ACCELERATED PAYMENTS

SUMMARY

1. These amendments correct a technical point in clauses 212 and 222, and Schedule 28 by removing an unnecessary link to an additional test and by clarifying references to ‘chosen arrangements’.

DETAILS OF THE AMENDMENTS

2. Clauses 212 to 226 and Schedule 28 provide for accelerated payment to be required of the tax in dispute in avoidance cases. It is not a test of what the eventual liability will or will not be, but a measure of how much tax is in dispute and, in line with the policy intent of this measure, should be paid by the taxpayer concerned while the dispute is resolved.

3. There are three circumstances where an accelerated payment may be required. These are where a follower notice has been issued under clause 197; where a return or claim has been made on the basis that there is a tax advantage arising from arrangements that fall to be notified to HMRC under the Disclosure of Tax Avoidance Scheme rules, or DOTAS; or where the arrangements are being counteracted under the General Anti-Abuse Rule (GAAR).

4. The Government’s intention is that the DOTAS test should be a clear, simple and objective test. However, the legislation inserts an additional, unnecessary test into this process. This is because of how the term ‘tax arrangements’ used in this clause was defined in clause 194(3). This definition sets out that the arrangements must have as their main purpose, or a main purpose, the obtaining of a tax advantage. As clause 212 stands, that requirement applies to all three circumstances where an accelerated payment may be required.

5. However, arrangements notified under DOTAS already have to satisfy a condition that ‘the main or a main benefit’ expected to arise is a tax advantage, under section 306(1)(c) of the Finance Act 2004. Once this test in the DOTAS legislation is satisfied there should be no requirement to consider a further test involving tax benefit or tax purpose.

6. The Government is therefore introducing Amendments 32, 35 and 36 to use the term ‘arrangements’ instead of ‘tax arrangements’ to make clear that the DOTAS criterion does not need to address the additional test.

7. Further Amendments 33 and 34 also make a small technical adjustment to the follower notice (clause 212(4)(a)) and GAAR (clause 212(4)(c)) criteria. In these cases the term ‘tax arrangements’, giving the link to the main purpose test, is unnecessary because that

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test will already have been addressed in giving the related follower notice, and is also the starting point for any case considered under the GAAR.

8. Amendments 33, 34, 37 and 38 also clarify the use of the term ‘chosen arrangements’. Without these amendments, that term is defined but is then only applied to the DOTAS criterion and not to the GAAR or follower notice criteria. These amendments expressly insert that defined term into the criteria for all three circumstances where an accelerated payment can be required.

BACKGROUND NOTE

9. This legislation provides for accelerated payment of the tax in dispute in avoidance cases, where certain specified conditions are met. It was first published in the consultation document ‘Tackling Marketed Tax Avoidance’ in January 2014.

10. The aim is to change the economics of tax avoidance by requiring the accelerated payment, thereby putting those trying to avoid tax on the same footing as many others who pay all their tax up front and have to make a claim for repayment if they think they have overpaid.

If you have any questions about this change, or comments on the legislation, please contact David Edney on 03000 585985 (email: david.edney1@hmrc.gsi.gov.uk).

Thursday 5 June 2014
PUBLIC BILL COMMITTEE

- Mr David Gauke 32
Clause 212, page 141, line 3, leave out “tax”
- Mr David Gauke 33
Clause 212, page 141, line 9, leave out “resulting from the same tax arrangements” and insert “and the chosen arrangements;”
- Mr David Gauke 34
Clause 212, page 141, line 13, after “it” insert “and the chosen arrangements”
- Mr David Gauke 35
Clause 222, page 151, leave out line 18
- Mr David Gauke 36
Schedule 28, page 536, line 6, leave out “tax”
- Mr David Gauke 37
Schedule 28, page 536, line 15, leave out “resulting from the same tax arrangements” and insert “and the chosen arrangements;”
- Mr David Gauke 38
Schedule 28, page 536, line 21, after “it” insert “and the chosen arrangements”