

Explanatory Note

Clause 17 and Schedule 3: Banking companies: surcharge

Summary

1. These are technical amendments to Schedule 3, Clause 17, to ensure that the legislation (to be introduced in new Chapter 4 of Part 7A of CTA 2010) operates as intended and applies to the appropriate population.

Details of the amendments

2. Amendment 19 amends the calculation of a company's surcharge profits at section 269DA (2) CTA 2010 to include relevant transferred out-gains and to exclude non-banking transferred-in gains and research and development (R&D) expenditure credits (under Chapter 6A of Part 3 of CTA 2009).

This amendment ensures that capital gains arising in non-banking companies are not subject to the surcharge because of the way the capital gains rules treat transfers of assets between group companies. It also ensures that the surcharge does not reduce the value of R&D relief where the expenditure is incurred by a banking company.

3. Amendment 22 introduces new subsection 13A in section 269DC CTA 2010 to define a non-banking loss transfer.
4. Amendment 23 introduces new section 269DCA CTA 2010 to define a relevant transferred-out gain and non-banking transferred-in gain.
5. Amendments 24 and 25 introduce new subsections (2) to (7) of section 269DN which make further provision in relation to what constitutes a banking company.

These subsections provide a targeted exclusion for asset management companies (from being treated as a banking company) where they have an ancillary deposit taking business and for other companies where accepting deposits represents a small part of their balance sheet and they are the only company in the UK group which accepts deposits.

6. Amendment 27 introduces new subsections (5A) to (5D) in section 371BI TIOPA 2010.

These subsections ensure that the surcharge applies to profits which are subject to a charge under the UK controlled foreign company regime. The existing anti avoidance measure provided for counteraction where business profits were transferred out of a controlled foreign company. This amendment ensures the surcharge applies where the relevant interest in a controlled foreign company is moved from a banking company to a non-banking company and where there are arrangements where the main purpose, or one of the main purposes of the arrangements, is to avoid or reduce the sum charged under the surcharge.

Background note

7. At Summer Budget the government announced the introduction of a new surcharge on banking sector profit, alongside phased reductions to the bank levy rate and a future change to the bank levy's scope.
8. These changes are designed to ensure a fairer, more competitive and more sustainable basis for taxing the UK banking sector in the long-term.
9. These amendments address areas of the surcharge legislation which, upon scrutiny by officials and external advisors, were not working as intended.