

Explanatory Note

New Clause 8: Restitution interest payments

Summary

1. This clause introduces a new rate of corporation tax on amounts of restitution interest which may be paid by HMRC under a claim relating to the payment of tax on a mistake of law or unlawful collection of tax. It also introduces an obligation on HMRC to withhold the tax due from a payment of restitution interest when made.

Details of the clause

CTA 2010 Part 8C: Restitution Interest

2. Subsections 1 - 3 introduce new Part 8C to Corporation Tax Act (CTA) 2010.
3. Subsection 4 - 8 provide consequential amendments to section 59D of Taxes Management Act (TMA) 1970 and Schedule 56 to Finance Act (FA) 2009.
4. Subsection 9 provides that this clause has effect in relation to payments of restitution interest in respect of awards that are finally determined on or after 21 October 2015.
5. Subsections 10 provides that this clause has effect in relation to a withholding obligation on HMRC in relation to payments of restitution interest made on or after 26 October 2015.
6. Subsections 11 - 12 provide definitions for the purpose of subsection 9

Chapter 1

7. Chapter 1 contains sections 357YA to 357YJ which sets out the circumstances in which the new rate of corporation tax will apply and includes [a/two] targeted anti-avoidance rule[s].
8. Section 357YA applies the charge to corporation tax to restitution interest.
9. Section 357YB makes clear that profits of a company which consist of restitution interest will come within new Part 8C regardless of whether the profits are on revenue or capital account.
10. Section 357YC sets out three conditions (Conditions A - C) which, when all are met, define which payments constitute restitution interest. Condition A requires that there must be a payment by HMRC in relation to a Common Law claim for interest, that relates to the payment of tax made under a mistake of law or the unlawful collection of tax. Condition B requires that the claim must either have been finally determined, or settled by agreement between HMRC and the company. A claim is finally determined where there is a determination by a Court, and that determination cannot be varied on appeal. Condition C is

that the interest is not statutory interest payable under a statutory provision for purposes relating to taxation. The definition of interest includes an amount which is equivalent to interest. That is defined as being an amount which is determined by reference to the time value of money.

11. Section 357YD explains that interest that has been paid as statutory interest before the date of the final judgment or settlement will not fall within the definition of restitution interest. However, this does not prevent an award of interest calculated by reference to simple interest at a statutory rate from falling within the definition of restitution interest.
12. Section 357YE and section 357YF confirm that the principles of generally accepted accounting practice apply for the purposes of determining the accounting period in which this interest arises. Provision is made at section 357YG for the consequences where a judgment in favour of a company is reversed on a late appeal, with the effect that HMRC are no longer required to make any payment. In that situation, HMRC is not required to repay any tax it may have deducted from any payment when first made, and the payment does not rank as a payment of corporation tax by the claimant.
13. Sections 357YH - 357YJ set out a targeted anti-avoidance rule to counteract relevant avoidance arrangements where the main purpose or one of the main purposes of the arrangement is to obtain a tax advantage. Section 357YH provides that any restitution related tax advantage which arises from relevant avoidance arrangements is to be counteracted by the making of just and reasonable adjustments. Section 357YI interprets what is meant by relevant avoidance arrangements, but excludes commercial arrangements from that definition. Section 357YJ sets out some examples which would not be considered to be commercial arrangements, such as delaying the recognition of the restitution interest or treating the receipt of the interest in a different way than it would have been in the absence of the arrangements.

Chapter 2

14. Chapter 2 contains sections 357YK and 357YL which provide that the gross amount of the restitution interest receivable is chargeable to corporation tax at the rate of 45%.
15. Section 357YL sets out that the rate of corporation tax to be applied to the restitution interest is 45%. Section 357YL provides that the amount of the restitution interest is not to be reduced by reliefs, allowances or set-offs available against the company's other chargeable profits, (past, present or future).

Chapter 3

16. Chapter 3 contains sections 357YM and 357YN which deal with situations where the right to the restitution interest is no longer within the scope of Corporation Tax.
17. Section 357M provides that if the right to the restitution interest is transferred by a person within the scope of corporation tax to a person not within the scope, and the purpose of the transfer was to secure a tax advantage for any person, any restitution interest which subsequently arises is deemed to be that of the transferor.
18. Section 357YN sets out that if a UK resident company had accrued rights to the entitlement to restitution interest at the time it changed its residence to become non-UK resident and the main purpose for the change in residence was to secure a tax advantage for any person, then

the company is to be treated as a UK resident company in relation to the amount of restitution interest which is attributable to the accrued rights. Additionally, in these circumstances, the company is treated as if it had not made a deemed disposed of the right to receive restitution interest under section 185 and 187 TCGA at the time it changed its residence.

Chapter 4

19. Chapter 4 contains Sections 357YO to 357YT.
20. Section 357YO sets out the obligation on HMRC to apply a withholding tax from a payment made that meets two conditions (Condition 1 and Condition 2). These conditions define what restitution interest is for the purpose of the withholding tax.
21. HMRC will have an obligation to withhold tax on a payment if that payment relates to interest paid on a claim for restitution relating to the payment of tax under a mistake of law relating to taxation matters or the unlawful collection of tax (Condition 1) and the claim is not for statutory interest payable under the Tax Acts (Condition 2).
22. The rate applied will be the restitutionary payments rate of 45% and it will be applied to the gross amount of the payment. The tax deducted will be treated for all purposes as paid by the company on account of the company's liability to corporation tax chargeable on the restitution interest under Chapter 2.
23. Section 357YP provides that the withholding tax deducted will be treated as being paid by the company on account of its liability to the charge to corporation tax on the restitution interest when it is formally assessed. This section also deals with the consequences if tax has been deducted from a payment which ultimately cannot or will not be regarded as restitution interest. If it turns out to be the case that the payment was not restitution interest at the time the tax was withheld, and the company is not required to pay back the net amount it has received, HMRC are required to repay the amount of tax withheld. If the company is required to pay back the gross amount of the restitution interest, provision is made for the amount of tax withheld to be treated as money repaid in partial satisfaction of the liability to repay the gross amount.
24. Section 357YQ provides for an assessment to be raised for an accounting period in which the restitution interest is chargeable and that any withheld tax is to be credited against the tax due. Section 357YR makes provision for statutory interest to be paid where the amount of withheld tax exceeds the tax liability. Section 357YS provides that a right of appeal against the deduction by HMRC of the tax withheld from the restitution interest.
25. Section 357YT sets out that tax charged at the restitution payments rate is to be disregarded for the purposes of the quarterly instalment payment regime.

Chapter 5

26. Chapter 5 contains supplementary provisions set out in sections 357YU- 357YW.
27. Section 357YU provides a definition of statutory interest. Section 357YV sets out that the charge has priority over the any other corporation tax provisions.
28. Section 357YW provides a Treasury power to amend the Part by regulation which is subject to the affirmative procedure. Under the power, new Part 8C cannot be amended to bring in any

other type of interest or other defined payment which would not have been subject to the charge. It also cannot be used increase the rate or remove or prejudice any right of appeal. The power is capable of being exercised retrospectively, but does not have effect in relation to a claim that has been finally determined before 21 October 2015.

Background note

29. Under the law as it currently stands, payments of restitution paid by HMRC to companies, which relate to interest, are subject to Corporation Tax at the standard rate. However the interest payments targeted by this clause will be subject to a higher rate, to reflect the particular circumstances of these awards. These include the number of years over which the overpayments were made, the fact that any such awards would be calculated on a compound basis and the historic corporation tax rates that applied during the years to which these claims relate.
30. If you have any questions about this change, or comments on the legislation, please contact Susan Gardner on 03000 563815 (email: susan.m.gardner@hmrc.gsi.gov.uk).

