Explanatory Note

Clause 5: Income tax relief for irrecoverable peer-to-peer loans

Summary

1. This measure introduces a new tax relief that will allow lenders subject to Income Tax on interest that they receive from peer to peer (P2P) loans to set losses from irrecoverable loans against other P2P interest that they receive. This tax relief will allow lenders to claim relief on P2P loans that become irrecoverable from 6 April 2015, and will apply automatically to set losses from P2P loans that become irrecoverable on or after 6 April 2016 against other P2P interest received through the same platform.

Details of the clause

2. Subsection 1 introduces new Chapter 1A to Income Tax Act (ITA) 2007.

Chapter 1A: Irrecoverable peer-to-peer loans

3. Chapter 1A contains sections 412A to 412I which introduce the new tax relief.

Relief for irrecoverable peer-to-peer loans

4. Section 412A outlines the new tax relief and details what conditions must be met for the tax relief to apply.

5. Subsection 412A(1) outlines the conditions which must be met for an irrecoverable loan to be eligible for relief. This relief applies to loans that become irrecoverable on or after 6 April 2015.

6. Subsection 412A(2) states that a loan that becomes irrecoverable before 6 April 2016 will only be eligible for relief if the lender makes a claim to that relief. This means that if a claim is not made then the irrecoverable loan will not be eligible for relief under the Income Tax Acts.

7. This means that for a P2P loan that become irrecoverable between 6 April 2015 and 5 April 2016, if no claim is made the loss may be eligible for relief as a Capital Loss under Taxation of Chargeable Gains Act (TCGA) 1992, if it meets the relevant conditions.

8. From 6 April 2016 relief is given on irrecoverable P2P loans whether or not a claim is made. This means that a loss arising from a loan that becomes irrecoverable on or after 6 April 2016 will no longer be eligible for any relief under TCGA 1992.

9. Subsection 412A(3) states that this relief is only given against income received in the same tax year as the loan becomes irrecoverable.

10. Subsections 412A(4-6) state that relief for irrecoverable loans is only given against receipts of

interest from other qualifying P2P loans held through the same platform.

11. Subsection 412A(7) outlines how the relief is given against income.

12. Subsection 412A(8) states that in the case of a loan security has been granted, the presence of that security will be disregarded when considering whether the loan is "irrecoverable" for the purposes of this relief.

Sideways relief

13. Section 412B allows lenders to make a claim for additional relief for irrecoverable loans against receipts of interest from P2P loans that are held through other P2P platforms.

14. Subsections 412B(1-2) restrict the maximum amount of relief available to be set sideways against interest received through other platforms to irrecoverable losses in excess of amounts which can be set against interest received through the same platform.

15. Subsections 412B(3-5) specify that sideways relief for irrecoverable P2P loans may only be set sideways against interest received on other qualifying P2P loans.

16. Subsection 412B(6) outlines how the relief is given against income.

Carry-forward relief

17. Section 412C allows lenders to make a claim for additional relief for irrecoverable loans against receipts of interest from P2P loans received in future tax years.

18. Subsection 412C(1) restricts the maximum amount of relief available to be carried forward to irrecoverable losses in excess of amounts which can be set against interest received through other P2P platforms in the same tax year.

19. Subsection 412C(2) states that relief may be carried forward for the nest four tax years following the year in which the loan becomes irrecoverable.

20. Subsections 412C(3-5) specify that sideways relief for irrecoverable P2P loans may only be carried forward against interest received on other qualifying P2P loans.

21. Subsection 412C(6) outlines how the relief is given against income.

22. Subsection 412D outlines how relief carried forward should be calculated.

Supplementary provisions

23. Section 412E outlines the treatment of any amount that the lender may recover in respect of a loan that has previously been treated as irrecoverable for the purposes of this relief.

24. Section 412F acts to treat loans that a lender acquires by way of assignment in the same way as loans that they make as the original lender.

25. Section 412G states that in the case of loans held by a nominee or bare trustee for a beneficiary these should be treated as being held by the beneficiary for the purposes of this relief.

Interpretation

26. Section 412H outlines the types of loan which may qualify for this relief. These will be loans that are defined as "article 36H agreements" in Chapter 6B of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, are made on

commercial terms and not for the purposes of obtaining a tax advantage.

27. Section 412I defines an operator for the purposes of this relief as a P2P platform who is either authorised by the Financial Conduct Authority to carry on the business of P2P lending, or who has been granted equivalent permissions by another territory within the European Economic Area.

Background note

28. This tax relief has been introduced to put the taxation of income received on P2P loans on a comparable basis to the taxation of income received from other economically similar forms of investment. P2P lending sites are in essence an intermediary service that connects investors with money to lend with individuals or small businesses that need to borrow. The lender invests a lump sum using the platform which is then lent in small sub-loans to a number of borrowers.

29. It is this breakdown of the investment into multiple small sub-loans spreading the risk of default across several borrowers which is the new aspect P2P lending brings to retail investment. The ability to lend directly to a diverse portfolio of borrowers gives an individual with a P2P portfolio access to diversified lending opportunities which were previously only available to retail investors via collective investment vehicles. Provision of these products is regulated by the Financial Conduct Authority. P2P loans that will be eligible for this relief are those loans that would be also available to retail investors, from a provider (platform) which is regulated by the Financial Conduct Authority.

30. This new tax relief will act to allow investors to set losses that they incur on loans that become irrecoverable against the interest they receive on loans that are repaid. This will result in the investor being taxed on the amount that they receive on their portfolio, in a similar manner to the way that they would be taxed if those loans were held through a collective investment vehicle.

31. If you have any questions about this change, or comments on the legislation, please contact Charlotte Hopwood on 03000 585 950 (email: p2p.consultation@hmrc.gsi.gov.uk)