

## Explanatory Note

# Clause 35: Consideration for taking over payment obligations as lessee under a lease of plant or machinery taxed as income

## Summary

1. This measure tackles tax avoidance schemes that seek to generate non-taxable income in return for taking on liabilities under a lease that give rise to tax deductible amounts. It amends legislation for both corporation tax and income tax purposes.

## Details of the clause

### Corporation Tax

2. Subsection (1) introduces new Chapter 3 into Part 20 of Corporation Tax Act 2010 (CTA 2010).
3. Chapter 3 contains new section 894A of CTA 2010.
4. New section 894A(1) details the circumstances in which the section applies. Three conditions must be satisfied:
  - a company must agree to take over obligations under a lease of plant or machinery,
  - the assumption of those obligations results in tax deductible expenditure for the company, or a connected person,
  - consideration is payable to the company, or a connected person, for agreeing to take over the obligations.
5. New section 894A(2) provides that, in those circumstances, the consideration is treated as income of the company for corporation tax purposes received at the time of the agreement to take over the lease obligations.
6. New section 894A(3) disapplies section 894A(2) to the extent that the consideration is otherwise charged to tax as an amount of income, or is brought into account as income or in respect of the capital allowances of C, or a connected person.
7. New section 894A(4) clarifies that section 894A(1) may be satisfied regardless of how C takes over D's obligations under the lease.
8. New section 894A(5) provides relevant definitions.

9. New section 894A(6) and (7) ensures that any priority rule contained in the Taxes Acts, other than the General Anti-Abuse Rule in Part 5 of Finance Act 2013, has effect subject to new section 894A. A priority rule is a rule, however expressed, whereby particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
10. New section 894A(8) provides examples of priority rules.

## Income Tax

11. Subsection (2) inserts new section 809ZG into Chapter 6 of Part 13 of the Income Tax Act 2007.
12. New section 809ZG replicates for persons chargeable to income tax the provisions of section 894ZA of CTA 2010, making necessary adjustments to refer to the appropriate taxes.

## Commencement for both taxes

13. Subsection (3) sets out the commencement provision for both taxes. The new rules apply to agreements entered into on or after 25 November 2015.

## Background note

14. HMRC has received disclosures of tax avoidance schemes that involve arrangements whereby non-taxable consideration is received when taking over tax deductible lease obligations. To the extent that such consideration is received, the person taking over those obligations incurs no real expenditure. The legislation addresses this form of avoidance by ensuring that all of the consideration payable to that person or connected persons is taxable as income.
15. If you have any questions about this change, or comments on the legislation, please contact Paul Hindley on 03000 585576 (email: paul.hindley@hmrc.gsi.gov.uk)